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Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 480.

ROBERT PERRIN vs. THE UNITED STATES ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

Argument of John T. Morgan, Attorney for Appellant.

JUDG & DETWEILER, PRINTERS, WASHINGTON, D. C.

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The history of this and other land grants made in the first days of the Republic of Mexico, in the desert lands of Sonora, along the northern frontier, discloses the public reasons and explains the policy in which they originated and the necessity that gave origin to them, and they illustrate the character of the legal proceedings by which these grants were established and the records of them were made and preserved.

I. In Mexico there is no system of general public-land surveys. There are laws of a directory nature defining the legal subdivisions of lands and their measurement, but none for locating them on the surface of the country, except as each tract passes into private ownership.

In Mexico there is no statute of frauds. Lands are conveyed by contract or gift, with or without writing, as the people choose.

Hall's Mexican Law, § 1555.

There were no books of registration of land titles in 1827 to 1836 or at a later period, such as are provided by our laws. Titles were written upon sheets of paper, as each act constituting them was performed and certified, and at the close of the proceeding these original papers were fastened together in a title roll, placed in the archives, and a copy was given to the grantee. None of these were transcribed in books of registry. Memoranda of each grant were kept in a book called *Toma de Razon*, which was intended for the use of the public officers to inform them as to the lands that had already been granted.

II. On the 12th March, 1827, Ignacio Elias, Juan Elias, curate of Arispe; his sister, Doña Eulalia Elias, Don Rafael Elias, Captain Ignacio Elias, and Don Nepamucena Elias, kinsmen and members of a wealthy and distinguished family, determined to avail themselves, under the laws of Sonora, of a region that was watered by the San Pedro river and its tributaries (of which the Babacomari creek was one) for raising cattle and horses. They united in denouncing a large area of land through which these waters ran as being vacant and open to the claim which they then formally made, addressed to the treasurer general of Sonora. This tract is in the jurisdiction of the presidio of Santa Cruz, adjoining the rancho of San Pedro, and extended as far as the place of Tres Almos.

Based upon this denunciation, each of the claimants presented a separate claim to the particular tract in this larger area which he desired to purchase, Ignacio and Eulalia Elias uniting in one petition and offer of purchase. Don Rafael Elias, on the 12th March, 1827, petitioned for the

tract called "San Rafael del Valle," within said larger area, and it was granted to him. That grant is the same that is now before the Supreme Court in the appeal of Juan Pedro Camou against the United States. Ignacio and Eulalia Elias petitioned for the place called "Ignacio del Babacomari." Other grants were made at or about the same period in that vicinity.

These ranchos were the first industrial barriers that were formed by civilized men between the Apaches, Yumas, and other savage Indians of the north and the southern and civilized settlements in the central and southern parts of Sonora. They were very hazardous and expensive adventures, but they were conducted by men of ability, courage, and character, and, with alternations of success and defeat, attended with frequent combats, they held the country against the Indians, and made it productive in raising large herds of horses and cattle for many years.

The settlements at Yuma and Tucson, Arizona, were made possible chiefly by the courage, enterprise and means of the gentlemen who first occupied the ranchos of San Pedro, Babacomari, San Rafael del Valle, and Los Nogales de Elias; all of which are referred to in the several cases now before the Supreme Court of the United States and, as to all except the rancho San Pedro, the legal and other history is given in the respective records.

An examination of the record in the cases pending in the Supreme Court, in which the grant was confirmed by the court below, will disclose the state of hostility of the Indians along the Gila and Colorado rivers in January, 1838, ten years after Elias obtained the Babacomari grant. The survey of five square leagues of land, in one case, was made *in a part of one day* by men on horseback, who "measured and counted 300 cords—three leagues, a little more or less, allowing for the irregularities from making measurements on horseback." This loose estimation or guess as to the quantity of land included in the grant was "on account of

the great danger from savages," which is mentioned several times, in a hysterical way, in the official report of the survey.

This grant was as valuable for agricultural purposes as any land in Arizona, which gives it very great market value as compared with other lands in that region. *This survey was approved, and the title was adjudicated to Rodrigues.* The court below sustained the grant thus loosely and imperfectly designated in the survey, which was excused, and yet confirmed, because the Indians in that country were dangerous, although none were seen by the surveying party. That decision sustains a "legitimate title," such as the treaties compel us to "acknowledge" and "preserve the legal value which they may possess," because such grants were necessary factors in the work of using and civilizing those desert regions in Mexico. Keeping this wise national policy in view, the questions presented in these cases are quite easy to solve.

III. On pages 64 and 65 of the record in Coe's case Juan A. Robinson testifies that the hostile Indians at the time the grant was made to Fernando Rodrigues (in 1838) were constantly on the warpath, and the Yumas and the Apaches were making it quite impossible for white people, except with a heavy escort of troops, to remain for any time in that vicinity. Various attempts were made by the proprietors, but they were invariably driven back, and several times with the loss of life.

In the answer to the 4th cross-interrogatory the witness proves, by the statements of Rodrigues, that he never succeeded in establishing the actual occupation of these lands, at least before 1847.

In Ainsa's case (Record, pp. 55, 56) Mr. Kitchen proves the depredations of the Indians as far south as the Nogales rancho as late as 1855-'7.

Jesus Nunez testified in Perrin's case in 1894: He was

born in 1841. In 1854-'5 he was at the ranch of Babacomari. Elias had large numbers of stock on the ranch. They had houses on the ranch where the major domo lived. The Indians were on the warpath and remained hostile until the witness was an old man. The owners abandoned the ranch for some time, but when they had cattle to deliver they went back again.

Lonjino Castro, whose father was major domo for Elias, proves the occupation, with cattle, &c., for a series of years.

The testimony of Josea Rodrigues (pp. 23 to 26) is clear and strong to prove continued occupation by the Eliases.

Francisco S. Leon was sixty years of age when he was examined by Mr. Wasson, surveyor general, in 1879. His testimony is not in the least contradicted by any witness or fact in the case. His testimony gives a true and concise statement of the possession of Babacomari by Elias for many years as follows:

"Ques. 4. How long have you known said rancho?"

"Ans. For more than thirty years. I have traveled over it a great many times.

"Ques. 5. Do you know its boundaries?"

"Ans. I do not, but I know that it is situated on Babacomari creek.

"Ques. 6. What do you know about the possession of said rancho?"

"Ans. I know that Don Ignacio Elias had possession of said rancho in early times, and that he had much stock thereon.

"Ques. 7. Do you know when the possession of said rancho was abandoned by Don Ignacio Elias, the grantee?"

"Ans. I cannot remember the date, but it was many years ago. It was before the time of the war with the United States.

"Ques. 8. What was the cause of said abandonment?"

"Ans. It was abandoned on account of the Apache Indians, who burnt the ranch-house, killing the people and driving off the stock.

"Ques. 9. Do you think that Elias could with safety to himself and stock have occupied the rancho at any time

previous to that at which the Indians were suppressed by the American troops?

"Ans. It would have been impossible, and I know that within a few years depredations have been committed by the Indians near this rancho."

The deposition of Santiago Espinosa, who knew the rancho of Babacomari for thirty-five years, and was 77 years old when he testified in 1879, is to the same effect.

Record, p. 83.

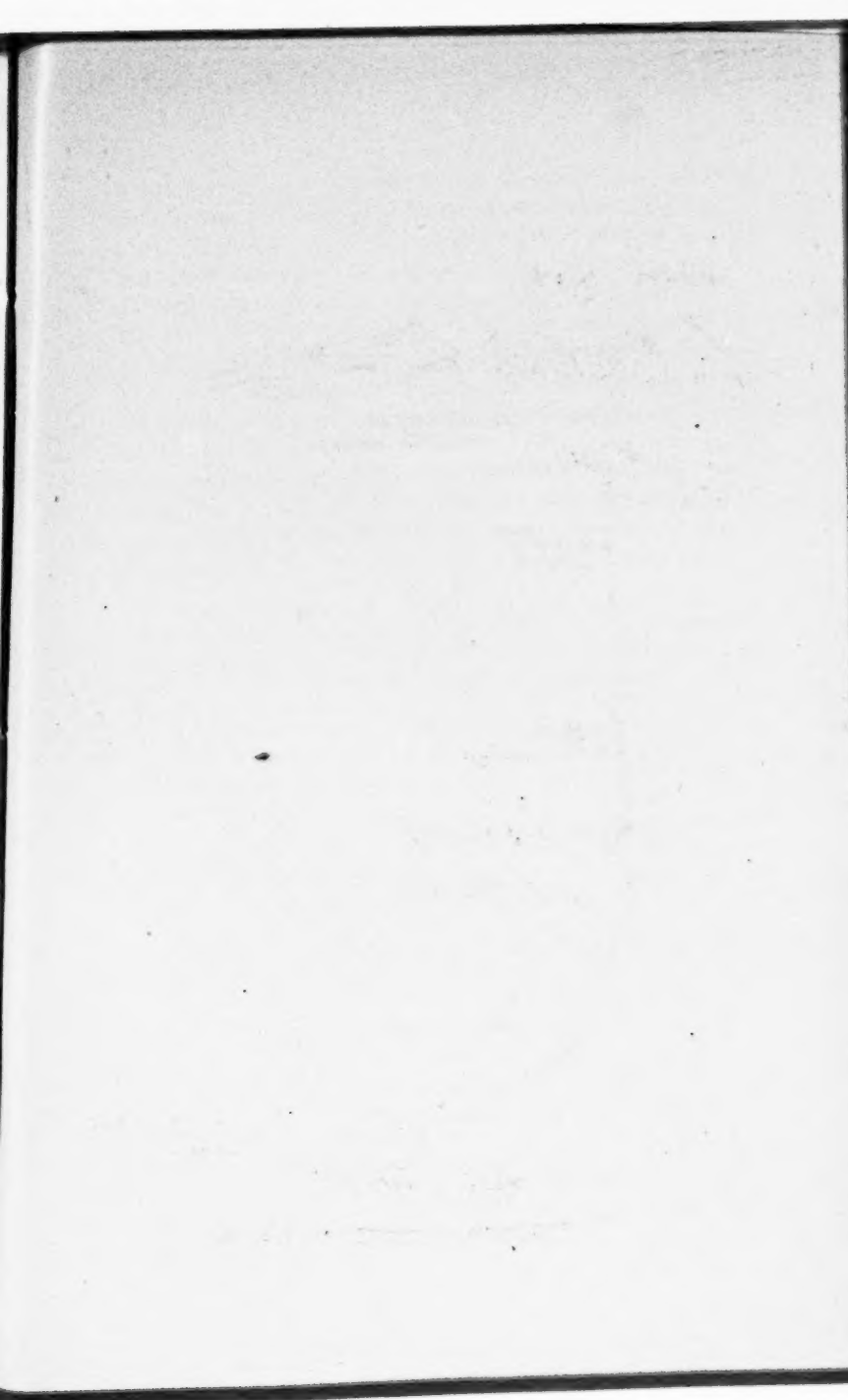
In 1841, and by a codicil in 1859, Juan Elias Gonzales, curate of Arispe, devised an interest in this rancho to charitable uses and to his sister Eulalia and others, showing the continued claim of the Eliases to this grant after they had been driven out by the Indians. (See his will.)

The chain of title from Ignacio and Eulalia Elias down to Robert Perrin is complete, all the conveyances being copied in the record.

These statements of the leading facts concerning the nature and *res gestæ* of the sale of these lands to Ignacio and Eulalia Elias present the question of the right of the State of Sonora to sell and convey to them a title—a "legitimate claim"—to these lands which the American tribunals are in duty bound to allow and establish under the treaties of cession made with Mexico. This question will be discussed later on.

IV. Whether the grant is sufficiently certain as to its location and area to enable the Court to decree its specific execution is a question that depends for its solution upon the state of the law and the practice under it in Mexico at the time the grant was completed.

Mr. R. C. Hopkins, of San Francisco, in a letter to the counsel for the appellant in this case, answering some inquiries made to him, gives the following explanations of the Mexican laws and practice in surveying and selling vacant



~~Plat.~~ XIX.



Hot Spring
Cottonwood in little valley
Hill with oak

Summit of Hill

Valley to little valley

Marsh (Campa)

Hill close to point of water

Back of point of water

Creek

Trunks

Very High Hill

Rocky Hill
Bald Hill

San Pedro River

lands that are clear and come from a source of unquestioned intelligence and long experience in such investigations.

Mr. Hopkins has been examined as a witness by both parties in several of the cases now before the Court, and his official reports as a special examiner for the Department of the Interior upon these subjects are in evidence as expert testimony of a high order. The following is presented as a part of the argument for the appellant to be considered on its merits as an argument and not as testimony in this cause, as it is not in the record.

In speaking of the Babacomari grant with which he made himself accurately familiar when he examined it as an agent of the United States, as is shown by his reports and depositions, he says:

"*First, with respect to its location.* The regulations of the 30th of May, 1825, made by the legislature of the State of Sonora for carrying into effect the act of the Mexican congress of the 4th of August, 1824, which gave to the several States the revenues derived from the sales of the public lands, *required* that the tract petitioned for should be *surveyed* by a *government surveyor* before the same could be offered for sale by the government to the highest bidder at public auction.

"In the year 1827 the tract of land known as 'San Ygnacio del Babacomari,' denounced by Ygnacio and Eulalia Elias, was by the constitutional alcalde of the presidio of Santa Cruz segregated from the public domain by an official survey, and clearly designated and located by *natural landmarks*, as is shown by the following eye-sketch made from the original field-notes of said survey:"

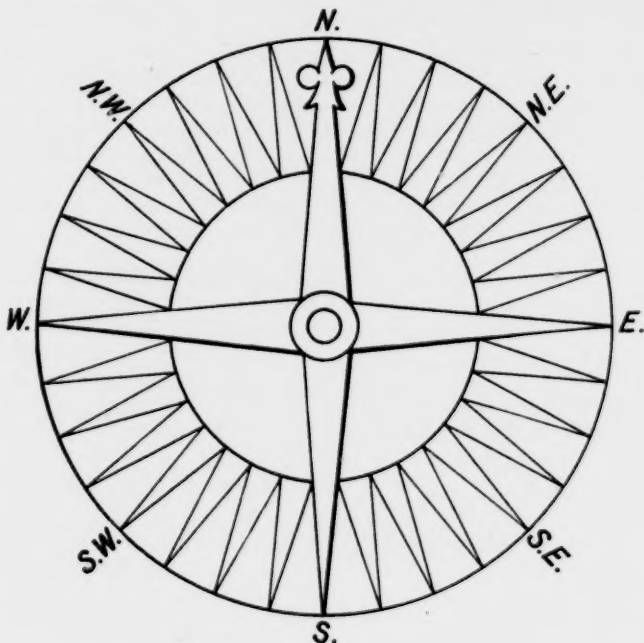
(See diagram.)

"The foregoing sketch is given merely to show clearly that the tract surveyed is *unquestionably* located by *natural landmarks*, since the landmarks shown thereon can all be identified on the ground, the *hot spring* especially being a prominent and well-known landmark. The portions of the lines in the sketch which are *dotted* were *not measured*, but the

distances were estimated, as was usual when the ground was very rough.

"The surveyor, in making the survey, followed the system as laid down by *Galvan* in his work on the survey and measurement of lands and waters (*Ordenanzas de Tierras y Aguas*), except that the *side lines* were not run, which was often the case, and which manifestly is not *necessary* for the *location* of the tract surveyed. Very often but *two lines* were run, one for the *length* and one for the *width* of the tract.

"The instrument used in making the survey was similar to the 'mariners' compass,' the dial of which was divided into 32 points—8 points of $11^{\circ} 15'$ to each quadrant—of which the following is a tracing, taken from *Galvan's work* above referred to:



"The Spanish words for east and west are 'este and oeste,' 'oriente and occidente,' and *sometimes* 'levante,' where the sun rises, and 'sonéinte,' where it goes down.

"The alcalde who made the official survey of the Babacomari was probably not very expert in reading the points of the compass which he used, or, as sailors call it, 'boxing the compass,' since he sometimes writes 'oeste' with a 'u,' thus, 'ueste,' and 'este' with a 'v,' thus, 'veste.' It is, therefore, not strange that he got tangled in giving the points of the compass in writing his field-notes of the survey, especially as he attempted to give both the *fore* and *back* sights on the lines he was running. It will be observed that on the dial of the compass shown by the foregoing sketch only the *principal* points are indicated by the letters giving the course, as N., N. E., E., etc., the intermediate points not being marked by letters. Therefore these points would have to be written by the surveyor from such knowledge as he might have of the *proper reading* of the 'mariners' compass.' But whatever mistakes he may have made in writing his notes of the courses run, he made *no mistakes* in describing the *natural landmarks* to which he intended the courses to run; and hence any *mistakes* he may have made, either from *carelessness* or *ignorance*, in writing the words giving the courses do not affect the *certainty* of the *location* as determined by *unmistakable landmarks*.

"It would seem at the first glance that the initial point of the survey cannot be ascertained from the field-notes, since he only placed a cross thereat, from which he took *no bearings*; but it will be observed that from this initial point he measured 100 cords on a given course to a *natural landmark*; hence the initial point might be ascertained by retracing this line of one hundred cords to the initial point; and, further, after finishing the survey of the westerly end of the tract, the surveyor says that he returned to the *central point* in front of the *sienea* of Babacomari.

"In my experience of many years with respect to the location of Spanish or Mexican land grants, I cannot recall *one instance* in which boundary landmarks have been established by *bearings* to other objects, and I can remember but a very few in which the tract granted is more clearly located by the title papers than is that of the Babacomari.

"It is proper to observe that while the boundary calls of Spanish and Mexican land grants are exceedingly unrelia-

ble so far as they relate to *course* and *distance*, the *natural landmarks* called for are almost always so clearly described that they can be easily identified, the reason of which is readily understood—the people were pastoral in their habits, were much of their time on horseback looking after their stock; hence they naturally acquired the habit of observing landmarks and giving them *characteristic names*.

"While it would be difficult, if not impossible, to find a Mexican land grant the *corners* of which could be found by tracing the *courses* and measuring the *distances* called for, the corners can easily be ascertained from the description given of the *natural objects* called for as landmarks.

"Many instances could be given from records showing how little reliance can be placed upon the *courses*, *distances*, and *areas* given in Mexican land surveys, a few examples of which will serve as illustrations:

"A *ranchero* in California obtained a grant for half a square league, which was measured off to him by the *alcalde*, who, knowing that 5,000 varas square embraced *one square league*, and also knowing that 2,500 was *one-half* of 5,000, concluded that 2,500 varas square embraced *one-half* of a square league. Another *alcalde*, in writing his field-notes of a survey, said: 'We measured from the *north* to the *west*,' intending thereby to describe the *northern boundary* of the tract he was surveying, which intention could only be ascertained by the character of the landmarks described. Many similar instances could be given as to the uncertainty of *course* and *distance*, and equal uncertainty and incorrectness is found with respect to *area*.

"The field-notes of the survey of the Babacomari, on being returned by the surveyor, were approved by the attorney general (promotor fiscal), whereupon the tract, as surveyed, was duly published for thirty days, at the end of which time it was sold to the denouncers at the government price, whereupon a *patent* was issued therefor to the denouncers, Ignacio and Eulalia Elias, by the treasurer general, who declares that by virtue of the authorities conceded to him by the laws he gives and adjudicates the tract of land described to the denouncers as a sale, limiting the grantees to the *termini* and *boundaries* described in the *proceedings of survey*, and directing that the grantees and their successors be protected in the peaceable possession of the said tract of land.

"On the receipt of the patent the grantees went into pos-

session of the tract purchased, placing stock thereon, and held possession thereof until forced to abandon the place on account of the ravages of the Apache Indians. (*See testimony of Francisco Leon and Santiago Espinosa. Record, pages 82 and 83.*)

"It is historically notorious that some time between the years 1830 and 1840 the settlers in the valley of the San Pedro were driven from their ranchos by the Apaches and that life in that region was not thereafter safe until comparatively recent times."

V. Mr. Hopkins then cites the following adjudications as to the surveys and boundaries of Mexican land grants, which show the indulgence that has been given to them on account of the public policy of Mexico in bringing this vast country under the influence of civilization, and on account of the difficulties of every sort that interfered with making accurate surveys, of which the ignorance of the surveyors and the inaccuracy of their field-notes was a conspicuous feature.

The following are the cases cited by Mr. Hopkins:

"1. *Rancho of Balsa de Escarpinos. Juridical measurement and possession.*—Beginning at the "rincon" (corner) of the "Balsa de los Escarpinos," which is situated to the west, they measured 233 cords towards the east, and from the lands of Trinidad Espinosa on the south 70 cords towards the north to the first willow tree in the cañada of San Miguel.' Confirmed by land commission and patented, the commissioner in his opinion remarking that the description of the tract was vague, but that he supposed the boundaries could be ascertained on the ground.

"2. *Rancho of San Agustin, confirmed to J. L. Majors. Juridical measurement and possession of one square league.*—'The measurers commenced by running the line to the N. x W. N. until reaching the lands on the S. x S. E., to which place were measured 100 cords (of 50 varas each), where a landmark was placed; thence E. to W. were measured 1,025 varas, where was placed a landmark, the measurers declaring that they had measured one square league.' The courses given are unintelligible, and the measurement, supposing

that one line was intended for the *length* and the other for the *width*, the area given would be less than $\frac{1}{4}$ of a league. Patented for one square league.

"3. Rancho of 'Rosa Morada,' confirmed to Cruz Cervantes. *Juridical measurement and possession.*—'Being at the foot of the hill on the north side of the rancho, from that point were measured 100 cords to the point of the slough of "Tequesquite," and from that point, which is to the east of the Arroyo Sico, shall serve as a boundary, completing the sitio in the Portezuelo of los Pichecos.' *Patented.*

"4. Rancho of 'Las Mariposas,' granted to Juan B. Alvarado. *Boundaries given in grant.*—'Ten square leagues between the Sierra Nevada mountains and the Chervehelas, Merced, and San Joaquin rivers.' No juridical measurements made nor possession given. *Confirmed and patented to Jno. C. Fremont for eleven square leagues.*

"5. Rancho of 'Simi,' granted to Jose de la Guevara y Noraga.—Juridical possession fixed as boundaries 'a straight line to the north, from a crest of large stones which is found to the west of "Simi," between the mouth of the "Salto" and the waters of the "Santa Rosa," as far as the top of the hill which divides "Cayequas" and "Las Posas."'

"The foregoing examples, which might be increased to hundreds, will be sufficient to give an idea as to the manner in which land surveys were made in California during the time of the Mexican government of the country.

"It is hardly necessary to remark that in none of the cases referred to could the location of the tract have been ascertained without *going upon the ground* and seeking the same *without regard* to the *courses* given and the *distances* said to have been measured. It is proper to remark that the *true* distance between the landmarks mentioned in the field-notes of surveys is generally *much in excess* of the *distance given particularly* when the distance has been *estimated*.

"In addition to what I have heretofore said relative to the authority of the State of Sonora to dispose of the public lands within the borders thereof, it will not be amiss to give some further historic facts.

"In the early '30s (I forget the *exact date*) a number of the inhabitants of Sonora petitioned the government thereof for a large tract of land to the northeast of Tucson in the region then infested by the Apache Indians for the purpose of colonizing the same, thereby forming a barrier against

the inroads of the savages. The tract petitioned for was called *Tres Alamos*, embracing some 60 square leagues.

"The treasurer general of the State had no authority under the regulations of the 20th of May, 1825, to make such a grant; the petition was therefore made to the *State government*, and, being favorably received, the treasurer general was directed to take testimony as to whether or not the petitioners possessed sufficient *means* to establish a colony on the tract asked for.

"The records show that the proceedings *progressed favorably* until 183- (the exact year I cannot remember), when the following entry was made therein: 'Proceedings suspended on account of the uprising of the Apaches.'

"This is an important fact, since it shows that the State of Sonora at that time claimed to have absolute authority to dispose of the public lands within its limits, and, further, it shows that at that date the Apache Indians had such control of the region of country lying on the San Pedro river that no *ranchero* could there, with any degree of safety, hold possession of the tract of land which had been sold to him by the State and of which he was required to keep *possession* unless forced to abandon it on account of the hostility of the Indians.

"This historic fact certainly shows that the State of Sonora claimed the right of absolute authority in the disposition of its public lands; and the fact that in the year 1830 an act was passed for the appointment of *Federal commissioners* to purchase lands in the frontier States of the Republic for the purpose of establishing colonies thereon shows clearly that the Federal Government recognized the right of the States to dispose of their public lands in such a manner as they might see fit. The law of April 6, 1830, provides:

"Article 3. The government shall appoint one or more commissioners, whose duty it shall be to visit the colonies of the frontier States; to contract with the legislatures of said States for the purchase by the nation of lands suitable for the establishment of new colonies of Mexicans and foreigners; to enter into such arrangements as they may deem proper for the security of the Republic with the colonies already established; to watch over the exact compliance of the contracts of new colonists, and to investigate how far the contracts already made have been complied with.

"Article 4. The executive is empowered to take possession

of such lands as may be suitable for fortifications and arsenals and for new colonies, indemnifying the State in which such lands are situated by a deduction from the debt due by such State to the federation.'

"It will not be out of place for me to say that for forty years I have had constant experience in the examination of Spanish and Mexican land grants in California and other places, having been several times sent to Mexico as special agent of the Department of the Interior to examine original records, and having as such agent examined the government archives of the State of Sonora, which extend back to the year 1661 (with respect to land grants), and in such service I have become familiar with the vague and uncertain manner in which the boundaries of lands are described in the Spanish and Mexican records, this vagueness being found through all the records I have examined both in California and Mexico.

"I omitted to say that *transcripts* of the original records and the proceedings thereon before the United States board of land commissioners in the cases from which I have taken the extracts sent will be found in the office of the Attorney General in Washington, in case you should wish to examine the same.

"The following extract from the *New American Cyclopaedia* gives a brief description of the last scene in the dramatic life of General Santa Anna in Mexico :

"In 1848, desiring to seek an asylum on a foreign soil where he might pass his last days in that tranquillity which he could never find in the land of his birth, on the 5th of April he sailed for Jamaica, where he remained for several years, but the anarchical condition of Mexico under the presidencies of Herrera and Avista turned men's eyes once more upon him, and, returning to Mexico in 1853, he was received with great enthusiasm. He was appointed president for one year, after which time he was to call a constituent congress, but he fomented a new revolution by which he was declared president for life, with power to appoint his successor and the title of most serene highness. He began to rule with despotic authority and the revolution of Aguilla followed, led by General Alvarez. After a struggle of two years Santa Anna, finding himself without resources, since he had spent the \$10,000,000 of the Gadsden treaty, signed

an unconditional abdication and sailed for Havana on the 15th of August, 1855.'

"From all that can be gathered from the political history of Mexico and from the customs of the country in surveying lands, as shown by the records, it is seen :

"*First.* That the State of Sonora was, under the law of the 4th of August, 1824, authorized to dispose of the public lands lying within the limits thereof ; and

"*Secondly.* That the tract of land called San Ygnacio del Babacomari, sold to Ygnacio and Eulalia Elias, was segregated from the public domain by a survey made in accordance with the usual customs of the country, and that the *locus* of the tract surveyed was much more definitely fixed than were the boundaries of most of the grants made in California about the same time."

These statements of Mr. Hopkins are sustained by the public records, judicial rulings, and the known and recognized facts of history within the judicial knowledge of the court, and are therefore quoted as valuable aids in the search for the truth relating to these transactions.

The land laws and the sales under them were far more accurately observed by the authorities of the *State of Sonora* than they were in New Mexico and California by the officers of the Federal Government who had the disposal of Government lands in those *Territories*. The legal *presumptions* in favor of such titles and the facts of public history that support them are stated in *Gonzales vs. Ross*, 120 U. S. Reports, with conclusive effect as to the validity of the grant and conveyance to Elias.

VI. *Did Sonora Have the Right, under Mexican Law and Usage, to Make This Sale of Vacant Lands ?*

In our acquisitions of territory from Spain, France, and Russia we have recognized and dealt with *regal powers* concentrated in and represented by the Crown, and in transferring the people of the ceded territories to the enjoyment of the new and extraordinary privileges of citizenship in a

free, constitutional republic we have provided with care for their full enjoyment of those powers and privileges in their future political relations to the United States and to the States which we covenanted should be formed of the ceded country.

In Mexico and Texas, on the other hand, we found organized republics, and in Mexico we found our dual system of States united in a Federal Government, each and all based upon the ultimate sovereignty of the people, with whose agents we conducted and concluded the negotiations.

In these treaties we recognized the leading and fundamental distinction between a republic and a government that is monarchic, between "a government of the people, for the people, and by the people" and one that derives its authority from some source that is above and independent of the people and not from the consent of the governed.

The cases are different. A change of government from a monarchy to a republic *must be a total revolution*. It is a change in substance and not in form merely. *It transfers to the people all the powers and rights that belonged to the Crown* and retains only such institutions, privileges, and vested rights as the people, through their newly constituted authorities, see proper to preserve. Such a total and radical revolution was that which finally expelled the royal and imperial governments from Mexico and substituted for them in everything a republic of confederated States that were free, independent, and sovereign.

All these ordinances, changing the form and nature of the government, declare that "its integral parts are free, sovereign, and independent States in whatever belongs to their internal *administration* and government, as shall be further stated in this act (the constitutive act of January 31, 1824) and in the general constitution."

Before 1820 the Crown of Spain owned all the lands, not granted by it to others, from the borders of Oregon to Terra del Fuego (not including Brazil), and bounded by the Sabine

river and the Atlantic on the east and the Pacific ocean on the west. The Spanish Crown became the owner of this vast domain in virtue of the papal bull of Pope Alexander VI, in 1493, and under the rights of subsequent discovery and conquest. But, even a Crown title to the public domain of any country, when it relates to the sovereign powers of government and administration and not to special ownership vested in the Crown for purposes of government or personal emolument, *is always coupled with the trust that the lands are held for the use and benefit of the vassal people.*

The established independence of the Republic of Texas, although it was denied by Mexico, destroyed the title of the Mexican nation to 274,356 square miles of territory, even while war was still flagrant between those States, and we recognized the fact.

It is the overthrow and destruction of dominion—sovereignty—that passes the title of a conquered land to the victor when a government is substituted that is new in form and substance, and not a succession or inheritance that preserves the chain of title in such cases.

In Mexico the title to the soil, subject to the trust that the people should enjoy it, was first in the ruling Spanish dynasty; then it went to the empire of Augustin I (Iturbide) under qualifications which admitted the people to the ownership and excluded his crown and family from some of the most essential rights and powers that belonged to the Spanish Crown. Then the States and people of Mexico asserted their sovereign ownership and dominion over the public lands, and in the "constitutive act of the congress of deputies" elected by them they provided, in January, 1824, that—

"The Mexican nation is forever free from and independent of Spain and of all other nations whatever, and is not nor can it ever be made *the property* of any person or family."

The widest signification of the term "property," as connected with the sovereignty or dominion over a nation (when it is interpreted with reference to the people who comprise the nation) is, that *they are subjects of the regal power* and have no connection with the Government, *except through allegiance and the duty of absolute obedience and subordination to the royal will.* The Mexican "nation" had been, but ceased to be such "property."

This condition of the people of Mexico was radically changed by the article 2 above quoted, and the condition that supervened *was that of citizenship in a republic, with the attendant rights which, in the aggregate, included and, indeed, created the sovereignty of the people.*

As an element of this sovereignty, and inseparable from it, was the "property" in the public lands and the political eminent domain over the lands held in private ownership. The people became "the nation." The change was radical.

After "the constitutive act" of January 31, 1824, which declared the fundamental principles upon which the Republic should be based in the constitution that was adopted by the same congress of deputies on October 4, 1824, nothing in the way of ownership, title, dominion, eminent domain, or usufruct in the lands of Mexico remained in the Spanish Crown or in the Empire of Augustin I (Iturbide).

In article 6 of the same act of January 31, 1824, it is ordained that "its—the Mexican nation's—integral parts are free, *sovereign*, and independent *States* in whatsoever belongs to their internal administration and government and as shall be further stated in this act and in the general constitution." No such declaration was made in respect of the Federal Government as to its sovereignty. The "provinces" thus erected into free, sovereign, and independent States are each named in article 9 of this "constitutive act," and Sonora and Sinaloa, which had before been united in one province called "the State of the West," were separated into two states.

All these provinces or States had chosen their delegates to this congress, who subscribed the constitution.

It had been called by Iturbide, as emperor, but he abdicated and left the country before it made any decrees. The empire being destroyed, the existence of the Republic and the sovereignty of the States were declared by the same act without the intervention of any time.

The birth of the nation—the Republic, and the recognition of the States—was identical in point of time, and they were born of the same mother—the people of Mexico. The decree was for the people and by the people, through their deputies chosen in the several provinces.

The ultimate title to the lands within the territorial limits of the Republic was resumed by the people, and the administration of such as were not in private ownership or were not reserved to the Federal Government was left in the States within whose sovereign jurisdiction they were located.

That constitution was modeled after that of the United States, but the power was not expressly granted to the National Government to dispose of the territory of the nation within the States, if it had any, which was conferred upon Congress in our Constitution.

The National Government and the State governments, created by the same sovereign power of the people, at the same time, and by the same decree of their representatives, did not confer upon or release to each other any powers that were carved out of any pre-existing rights of statehood or sovereignty. In this respect also the Mexican National Government was unlike ours in its origin. The constitutive act of January 31, 1824, was an original distribution of powers to each of these governments, separating them for the purposes of national and local government, which powers resided in the people.

The "constitutive decree" in article 3 declares that "sovereignty resides primarily in the nation" (not in the Federal or the State governments), "and hence to it (the nation)

alone belongs the right of adopting and establishing through its representatives the form of government and other fundamental laws that it may deem proper for its (the nation's) preservation and happiness, modifying them to suit itself." In that law the subject of providing for the support of the National and State governments was left open.

In article 24 the power of these "free, sovereign, and independent States" to ordain constitutions was recognized with only this limitation, that "the State constitutions must not be repugnant to this act or to the provisions to be contained in the *general* constitution."

There is no provision in the "constitutive act" or in the general constitution of 1824 which confers upon the National Government any title to the lands within the States; hence an assertion of the States that they have the right of disposal of lands within their limits is not repugnant to the constitutive act of January 31, 1824, or to the constitution adopted October 4, 1824.

Prior to August 4, 1824, the States of Sonora and Sinaloa, which were recognized as being separated in their sovereignty in the constitutive act of January 31, 1824, reunited as one State under the name "Estado del Occidente," and the State was so treated in the apportionment made by the decree of the constitutive congress of the United States of Mexico, dated August 4, 1824.

That decree provided sources of revenue for the "Federal Government" and also for the States, and was the first law on that subject.

In the meantime the "constitutive congress of the State of the Occident" was preparing the State constitution, which declared that "the government of the State is republican, representative, popular, federal." It conferred on its congress the power "to impose taxes," "to promote and encourage agriculture," "to settle the boundaries of the lands of the native inhabitants" (Indian tribes), "to make rules for colonization in conformity with the laws," "to elect in

accordance with the general constitution the president and vice-president of the Mexican federation, the ministers of the supreme court of justice, and senators of the congress of the union," and, "finally, to exercise all the powers of a legislative body in its internal government and administration not contrary to the general constitution and the constitutive act." These powers are plenary, and they include the dominion over the lands within the State of the Occident, because that is not repugnant or contrary to any right granted or admitted to exist in the Federal Government relating to those lands.

Up to this point the same principles apply to the legal and historical situation in Mexico that determine the relative rights of the States and the United States Government under our own dual system of government. The United States has no land except such as it has acquired by conveyances from the States or by treaty cessions. It did not require any express provisions in the constitution of the States or of the United States to create or establish the rights of our States to their lands as a consequence of their sovereign statehood. That was never disputed.

The universal law of republics is that, the people being sovereign, the vacant land within the limits of a State that is "republican, representative, popular, federal, and sovereign" belongs to the people until it has passed into private ownership or has been ceded.

It was in view of these facts and principles that the Congress of the United States welcomed Mexico into the sisterhood of republics and rejoiced that her people had become the only source of sovereign power in that country. She was recognized as a free and independent federal republic, the national center of a federation of sovereign states, and Mexico has firmly established that republican federation in despite of the most serious impediments, internal and foreign, all of which we have deplored and some of them we have resented as a nation. The attempted centralization of

the Republic, in 1836, which was based while it lasted on the reduction of the States to the political status of mere departments of a national despotism, was as repugnant to our views of the rights of the Mexican people as the subsequent empire, which while it lasted placed them in the low condition of subjects of an Austrian prince. We can never justify such a degradation of the rights of the people and the sovereign States of the United States of Mexico for the purpose of denying validity to the laws of Sonora, while the United States is claiming, under such a construction, title to lands in her own right, that Sonora sold to her own people more than half a century ago.

VII. But these rights of the purchasers of land from Sonora are sustained by additional and still more specific facts.

The constitution of the "State of the Occident," adopted in 1825, but prepared in 1824, contains this provision:

Section sixteenth (293). "The revenue (rentes) not reserved by the federation by the decree of classification of revenues (rentes) of August 4, 1824, last past, are those which, up to the present time, have formed *the elements* of the revenue of the State."

"Hereafter *the congress (of the State)* will impose the *taxes* which it may deem proper in such amount only as may be sufficient to cover the deficit which may result against the State on account of the general expenses of the Mexican federation which it has to pay and the special expenses of the State itself."

The "act of August 4, last past," referred to in section 16 of the constitution of the State of the Occident, is a classification of the general and special revenues (rentes) of the Federal Government. They are stated under ten heads, including import and export duties and specific taxes in the nature of excises and imposts.

None of these include unoccupied or vacant lands or

lands belonging to the people in the States, or lands within the States.

It was the intention of this "constitutive act" to derive the general (administrative) expenses of the Federal Government from a tax laid directly upon the States respectively in proportion to "their wealth and population." (See section 17 of the act.)

To enable the States to raise these sums the revenues (rentes) not expressly granted to the Federal Government were expressly reserved to the States in section 11 of this act:

"11. The revenues (rentes) not included in the foregoing articles belong to the States."

Section 14 provides:

"The States of the federation shall be assessed in the sum of \$3,136,876, which it is estimated is needed for general expenses."

The amount assessed to the State of the Occident was \$53,125, for which the constitution of that State authorized its congress to levy taxes.

Section 8 of article 161 of the federal constitution of 1824 makes it the duty of the States—

"To present annually to each one of the houses of the general congress a minute and comprehensive report on the amounts that are received and paid out at the treasuries within their limits, together with a statement of the origin of the one and the other and touching the different branches of the agricultural, commercial, and manufacturing industries," &c.

VIII. In Mexico it has all the time been held and considered that this provision for the direct taxation of the States for the general expenses of the Federal Government was accepted by the States because the public lands within their limits were their property and were comprised in the "rentes," from the sale of which they would derive revenue.

None of these taxes were levied upon the Territories of New Mexico or Upper or Lower California, because the lands in those Territories belonged to the Federal Government, being within its sovereign jurisdiction, and the proceeds of their sales were general revenues of that Government.

The National Government began the experiment of colonization in 1823, under the administration of Domingues, which they repented of and sought to reverse in 1835, when Texas began to fill up rapidly with colonists from our States. The law of 1823 applied to all the provinces, and was supplemented on the 18th of August, 1824, by the act of the constituent congress. This act is a clear declaration of the respective rights and jurisdiction of the States and the Federal Government as to the disposal of lands that were unoccupied in the States and in the Territories. The rights of the States were respected even under the policy of colonization by immigration from other countries, which was properly a matter of national concern and regulation.

It is declared in article 2 of that law that "the objects of this law are those *national lands* which are neither private property nor belong to any corporation or town (*pueblo*), and can therefore be colonized," and it provides that (article 3) "to this end the *Congress of the States* will form as soon as possible the *laws and regulations* of colonization of *their respective demarkation* with entire conformity to the constitutive act, the general constitution, and the rules established by this law." The fourteenth article prohibits the formation of colonies within ten leagues of the seacoast and within twenty leagues from the boundary of any foreign country, and article 5 reserves the right of the Federal Government to appropriate those lands to public uses.

"Article 15. The government, in conformity with the principles established in this law, *will proceed to colonize the Territories of the Republic.*"

On the 21st of November, 1828, rules and regulations were adopted by the constituent congress for carrying this colonization law into effect. These regulations applied *alone to the Territories*. The reason for this is given in a precis, or preamble, to those regulations as follows :

" It being stipulated in the fifteenth article of the general law of colonization of August, 1824, that the government, *in conformity with the principles of established law*, shall proceed to the colonization of the *Territories* of the Republic
* * * his excellency has seen fit to determine on the following articles : "

"Article 1. *The governors of the Territories* are authorized
* * * to grant vacant lands in their respective Territories to such contractors (*empresarios*), families, or private persons, whether Mexicans or foreigners, *who may ask for them for the purpose of cultivating and inhabiting them.*"

A grant for colonization was not definitive until it was approved by " *the territorial deputation* " or, being re-used by that tribunal, by the supreme government.

In 1831 the entrance of people from the United States on the northern frontier, except with passports, was prohibited.

On the 24th of April, 1835, a law was enacted by the Federal Congress, which, taken in connection with the law of August 18, 1824, and the regulations under it (above quoted), leaves no doubt as to the ownership by the States of the vacant lands within their respective limits, as follows :

" 4. The General Government may, in accordance with the third and fourth articles of the law of sixth April, 1830, *purchase of the State of Coahuila and Texas the amount of four hundred sitios, which it says it is under the necessity of selling.*"

As late as May, 1875, this right of the States to the vacant lands within their limits was expressly declared in articles 5, 6, and 7 of an act of the Congress of the Union. (See Hall's Mexican Law, §§ 528 to 535.)

IX. After the promulgation of the Federal constitution, in October, 1824, the States proceeded to enact laws for the disposal of the public lands within their limits, to which no objection was made by the Federal Government. "The State of the West," through its constituent congress, enacted a law, No. 30, on the 20th of May, 1825, which carefully provided a complete system regulating the sale of its public lands. This task was a comparatively simple one and was not embarrassed with any question as to the right of the State to dispose of its lands or as to the best regulations for that purpose.

The whole of the territory of Mexico was formerly divided into twelve provinces and kingdoms.

By royal decree of October 15, 1778, the States of Sinaloa and Sonora were included, with other States and Territories, in the jurisdiction of the audiencia of Guadalajara, and so it remained until the constitution of October, 1824, was ordained. This audiencia had the power to sell the public lands and to grant titles in fee to the purchasers, and they proceeded to do so in many cases. (See Hall's Mexican Law, §§ 87 to 109.)

The proceedings to obtain a grant of lands were in substance the same that were afterwards prescribed by the State of the Occidente. (See Hall's Mexican Laws, §§ 172, 173.)

By a royal decree of November 23, 1792, the commandencia general of Sonora and Sinaloa was independent of the viceroy as to many local matters, and there was attached to the audiencia of Guadalajara the subdelegacy of superintendence of the royal treasury, which gave the same power to sell lands as was vested in the intendencia by the ordinance of 1786. (See Hall's Mex. Laws, § 186.)

This *cedula* was the model for the procedure for selling the lands of the State adopted by the State of the Occident when it was declared free, independent, and sovereign.

From these royal decrees of Spain and the practice under them it is seen that the States of Sinaloa and Sonora were

independent of the Mexican vice-regency as to the sale of the public lands at the time and before the revolution which overthrew the monarchy and established the republic.

The root of their title had no lodgment within the jurisdiction that Domingues, Iturbide, or Heréra abolished, but in that of Sinaloa and Sonora, which, without yielding any sovereign or territorial rights, aided by their deputies in establishing the national republic, whose integral parts were free, sovereign, and independent States, *and in whose people the title of the public domain rested.*

X. These views of the question as to whether the public lands of Mexico, in 1824, within the limits of the States belonged to the people of the States, to be disposed of under their laws, or whether they belonged to the Federal Government, are supported by very learned jurists in Mexico.

A quotation from the deposition of Señor Eduardo Caostaneda, given in the case of *The United States vs. Coe*, will shed a true and strong light upon this question.

His career as a publicist has been eminent in Mexico, where he is a senator and has held several distinguished judicial offices, including that of one of the judges of the supreme court of Mexico. He testifies as follows :

"Q. State if you have made a special examination of the laws relating to the sale or granting of lands by the State of Sonora since 1824; and, if so, state your knowledge thereof.

"A. I have, and the State of Sonora had ample legal power and authority to dispose of its lands in the manner provided by its own laws. The reason is that the State of Sonora did not have its sovereignty and rights limited only as far as the authority and rights it delegated to the Congress of the Union, and this is proven by article first, second, 109, section 31, article 293, of the constitution of the State, made on 21st October, 1825, sanctioned and promulgated on the 2d of November, 1825. This constitution was enacted for the State of Occidente, composed of the States of Sonora and Sinaloa. The limitations of those rights are found in the laws of the federation, in the part which refers

to lands, and found in the laws of classification of rents for revenue, dated 4th of August, 1824. That law does not name among the revenues of the Federal Government the revenue proceeding from the sale and products of vacant lands, and consequently those lands belong to the State according to article 11 of the same law. Said law, as can be seen in articles 9 and 10, does not treat exclusively of taxes, but as well of the property belonging to the government, and one as well as the other is comprised under the name of 'rentes.'

"The State has been always exercising the authority to dispose of and legislate on the vacant lands without opposition from the federal authorities, and this is proven by the laws enacted by the general congress, in which, in an implicit manner, is recognized the authority that the States had to dispose of the public lands." (Decrete de Septiembre de 1824, sombre de administracion de la hacienda publica y los estodos.)

"Said decree places under the administration of the general commissaries the taxes and all the revenues of the property of the Federal Government, and in articles 4 and 5 are there enumerated; and it is seen that there are not included the public lands, precisely because they belonged to the States.

"The decree of the 16th November, 1824, arranges the administration of the public treasury of the nation and omits absolutely to say anything about vacant lands, notwithstanding speaking (of) and enumerating all other taxes and revenues. In virtue, therefore, of the authority that the State had to dispose of the public lands it issued several laws and, amongst others, that of July 11, 1834, and it is seen clearly the way that it disposed of the lands—to sell them." * * * "The only limitation that the State had to dispose of its public lands is that of not being authorized to colonize them, except under the basis that the decree of 18th August, 1824, establishes; but this decree refers exclusively to colonization. By colonization I mean, to give them and to establish there what we understand a colony or union of individuals that come from other parts to settle; but that law did not prohibit absolutely the State to sell us Mexicans any of that land. This is confirmed by the fact that the Congress of the Federation declared null some of the dispositions of the State on colonization, notwithstanding-

ing it did not declare null the laws of the same State in virtue of which it disposed of said vacant lands in other ways." (Decree of 21st February, 1824, which declared null a decree of the general legislature of Coahuila and Texas on account of having been enacted on colonization; decree of 14th May, 1851, which declared null a decree of the legislature of the State of Sonora on colonization.)

"From these decrees deduction is made that the limitation on the State only refers to colonization, and that they could dispose of it in other ways—the public lands.

"That is all confirmed by our public right, according to which no one doubts of the validity of the alienations, as that of the Algodones was made by the authorities of the States, under the federal system, by virtue of its own powers." (For instance, article 2 of the decree of 3d December, 1855.)

* * *

"The decree (of Santa Anna) of 25th November, 1853, affected in no way the validity of the titles issued by the States under the federal system. That never had application, and neither the very tribunals existing in the same epoch in which the law was issued never would have applied to it as to the titles issued by the States according to their own laws, because said decree contains provisions with retroactive effect, and provisions with retroactive effect do not apply, nor have they been applied by the Mexican tribunals, because they are null *ipso jure* according to the civil law in vigor in the epoch of the Spanish government and in conformity to the constitutional laws of the years 1824, 1836, and 1843, according to which the inhabitants of this country have the guarantee of not being tried by laws *ex post facto*.

"For this reason there can be no doubt that the decree of the 25th November, 1853, does not affect the validity of the titles issued in the epoch of the federation.

"Question by Judge SLUSS:

"Q. I call your attention to the expression in article 3 of the law of August 18, 1824, as follows: 'Conforming themselves to the regulations established in this law,' and ask you, in your opinion, whether that would include the provision of section 11, to the effect that no person should be permitted to receive more than eleven square leagues of land.

"A. This law refers exclusively to colonization—that is to say, it prohibited the States to give more than that expressed in article 12 to the colonists that came to settle vacant lands, but it did not limit the authorization or power which the States had according to their own laws to sell to any Mexican a large extension of land. * * *

"Q. Is it not the fact that the title to all the vacant land as between the State and the Federal Government was originally vested in the Federal Government?

"A. From the moment that the nation entered into the federal system that right originally belonged to the States as owners of their own territory, in the quality of free, independent, and sovereign States, with no further limitation than the powers and rights delegated by the States to the Congress of the United States.

"Q. By what instrument were these powers delegated to the Federal Government?

"A. By the Federal constitution, and also by the constitutive congress, among which is found that of August 4, 1824, in the part which refers to lands, and that of the constitution of the State, section 16, article 293, page 84, which says: 'The revenues which the Federal Government did not reserve to itself by the decree of classification of the 4th of August, 1824, are those that until this date have formed *the elements* of which the treasury of the State is composed.' * * *

"Q. Had the State the authority to absolutely alienate its land without the consent of the Federal Government?

"A. It had."

The deposition of Judge Guillermo H. Robinson in Coe's case supports the statements and opinions of Judge Castenada in every particular as to the laws of the Federal Government and of Sonora and their effect upon the right of disposal by the States of the public lands within their limits. They show that because the land is public it does not belong to the Federal Government, but it belongs to the States in virtue of the sovereign rights of the people and of the provinces—the first form of separate government—when they were declared to be States and the owners of these "*rentas*," as elements of their treasuries. These public re-

sources were, in both the Federal and State constitutions, expressly reserved to the States, with no restrictions of their full power of disposal except in reference to one policy of national concern, that they should not be granted to large bodies of foreign colonists except in conformity to national laws and regulations.

No witness or other person learned in the law has expressed an opinion in any of these cases to the reverse of those stated in the depositions of Judges Castenada and Robinson.

XI. Hon. J. A. Forbes, consul of the United States at Guaymas, Mexico, was for fourteen years keeper of the archives and translator for the surveyor general in California. He was examined as a witness in Coe's case. His statements and opinions concur with those of Judges Castenada and Robinson as to the right of the States of Mexico to dispose of the public lands within their limits.

After giving a full statement of the method of granting lands under the Spanish regime he says:

"After the Mexican independence the manner and mode of granting lands was not materially changed, but the form continued to be used and observed even as late as 1838. The Mexican Congress passed laws for the distribution of vacant lands. Lands were given gratis in the Territories of the Republic, of which the law of 18th of August, 1824, and the regulations of 21st of November, 1828; but the States did not make grants in that way. The lands of the States were not given away, but sold to the highest bidder in the same way that they had been alienated prior to the date of independence. The State of Sonora had its colonization law of the 20th of May, 1825, and so did the State of Chihuahua. The grants that have been seen today seem to have been granted in accordance with the provisions of the colonization law of 25th and that of the 11th of July, 1834.

"Q. 36. When you refer to the colonization laws of 25th of July, 1834, do you mean the colonization laws of the Republic of Mexico or the colonization laws of the State of Sonora?

"A. By the law of 4th of August, 1824, the supreme government of Mexico passed a law defining what the revenues of the government were and left to the States all that source of revenue that was not mentioned in the law as belonging to the Federal Government, and that revenue which was not mentioned in the law as pertaining to the Federal Government was the revenue that could have been derived from the sale of public lands.

"Q. 37. Prior to the enactment by the General Government of the law of August the 4th, 1824, was part of the revenue that which was obtained from the sale of the vacant lands? In the colonization laws of the Mexican Government, passed after the independence of Mexico, did the General Government attempt to dispose of any lands within the demarkations of the several States, or was the government's disposition of vacant lands by its colonization acts confined to lands within the Territories?

"A. My understanding of the general colonization law was that the lands, when given in colonization, were given to the colonists gratis, and the lands were limited only to the Territories of the Republic, which were not free and sovereign.

"Q. 38. Then, if I understand you correctly, your understanding of the colonization laws of 1823 and 1824 and of the other laws of the General Government relating to public lands was that the States owned the lands within their boundaries and the General Government claimed ownership within the Territories?

"A. Yes, sir; by consent of the General Government.

"Q. 39. Was not the distinction between the colonization act of August 18, 1824, and the manner of disposing of vacant lands in the States that the lands were given gratis under the colonization law, while under the procedure in the States they were sold?

"A. Yes, sir.

"Q. 40. Prior to the law of August 4, 1824, was it not the fact that there were no sales of the fee made, but that the juridical possession only was given?

"A. Yes, sir; only a permit to occupy.

"Q. 41. Then under the law of August 4, 1824, and of the States, the laws of the States of November 25, 1834, the proceedings amounted to the sale of the land in fee?

"A. Yes, sir; that is the way all the titles were issued or

given. By the fifth condition contained in every grant that was made in accordance with the provisions of the act of October 18 and August 24 and article 5 of the regulations of the 21st of November, 1828, it was provided that if the party interested contravened the conditions that were stipulated in the grant he would forfeit his right to the tract so given and it would be subject to denouncement by another party, and in the close of all grants made in this State it was stated that no person could molest or disturb the grantee and that he should enjoy the full and absolute ownership of the land.

"Q. 42. The law of August 4, 1824, as I understand you, granted to the States the right to use the revenue from the sale of vacant lands?

"A. Yes, sir.

"Q. 43. Then the law of August 18, 1824, known as the colonization act, gave the lands away gratis to settlements within the Territories of the Republic, but not in the State?

"A. No, sir.

"Q. 44. It has no effect in the State whatever?

"A. No, sir.

"Q. 45. Were there not in existence on August 18, 1884, Territories other than those of California and New Mexico?

"A. I don't know.

" Examination by Justice SLUSS :

"Q. 46. Have you much acquaintance with the manner of making of these documents, which were called the matrix, in this State of Sonora?

"A. They were nearly the same as those found in California, except in some particulars in which they differ.

"Q. 47. Well?

"A. I have seen many grants of land made in Sonora that seemed to me to be in the same form.

"Q. 48. Are these proceedings made from a memorandum as the several acts which are recorded were performed, or were they made as an entire record after the proceedings were completed?

"A. Each act was inserted in the expediente continued, or the proceedings were continued.

"Q. 49. Then, in your opinion, when an offer of a sale

had been made and no parties appeared, a report to that effect was made at the time and entered in this expediente immediately before any act was performed?

"A. Yes, sir.

"Q. 50. In your opinion, then, it was the act of August, '24, that the States derived their authority from. Was it the law of '24 or a law prior to that time?

"A. The State of Sonora could not derive its right to the land from any Spanish law after the date of the independence, but my opinion is that it derived its power to sell the lands from the law of 4th of August, 1824, the act of August 18, 1824, from the general act enacted by the general congress on colonization, the general law of missions.

"Q. 51. Did the General Government exercise any powers of the land in the States after it had been granted by the States to anybody?

"A. I don't believe they did, except the revenue that could be derived from those sources that are mentioned in the very law itself. Of course the sources of revenue which the government reserved are mentioned in the law, but no mention is made of revenue of the sales of lands as belonging to the General Government, but it says all sources of revenue not mentioned in that act shall belong to the States, and every paper that was shown today in the archives of this government recite that very law and the power that the government and the State derived therefrom—the act of August 4, 1824."

XII. On the 26th of February, 1879, Mr. Schurz, Secretary of the Interior, appointed R. C. Hopkins "to examine the Mexican archives relating to land grants made in the Territory ceded by the Gadsden treaty for the purpose of detecting and preventing the consummation of fraudulent claims of titles thereto."

Mr. Hopkins was well qualified for this duty by a long experience in such matters and a thorough acquaintance with the Spanish language. In his report, made after exhaustive research, he explains first the *ordinanzas* grants of *realengo* or public lands made under the Spanish laws, and proceeds to say :

"On the 4th of August, 1824, the sovereign general constitutional congress of the United States of Mexico passed decree No. 78, in which is specified the sources of the federal revenue, and the eleventh article of this recites—

"That the rents that are not included in the preceding article of this decree belong to the States."

"As a compensation for the concession of the General Government a sum of between three and four millions of dollars was required to be paid yearly by the States for the support of the General Government.

"This sum was apportioned to the different States according to their population and wealth, the sum apportioned to the State of Sonora being some \$53,000.

"Under this law grants of land have been made in the State of Sonora from 1824 down to the time when the system was changed by legislative enactment.

"After the independence of Mexico the old intendente, embracing the provinces of Sonora and Sinaloa, was called under the new government El Estado del Occidente, Sonora and Sinaloa continuing united under that name until the year 1830, when they were divided by the boundaries, I think, as they now exist.

"Between the time when grants ceased to be made within the intendencia of Sonora and Sinaloa by authority of the Spanish government and the time when they were made by the authorities of the El Estado del Occidente, under the law of 1824 of the general congress and the provisional regulations of the Congress of the State, the granting power was exercised by an officer entitled *comissario general provisional de hacienda credito publico y guerra*, whose headquarters, as shown by the records of the times, were generally at Fuerte, a town in Sinaloa, near the northern boundaries of the States.

"About the year 1825 notes of the expedientes in the archives show that this officer issued a number of grants on proceedings which, under the Spanish government, had not gone further than the approval of the provisional junta de hacienda, having been at that point suspended in 1821 by the revolution.

"In these cases no *barrad* or copy of grant is found in the expediente, but a note is found of the registry of the grant in Cuaderno No. 2, in the office of the comisario general.

"On the 20th of May, 1825, the constituent congress of

free, independent, and sovereign State of the West (Estado del Occidente) passed provisional law No. 30, regulating the system of granting public lands. Under these provisional regulations the prices at which the public lands were to be sold were graduated according to the location and quality of the land. The quantity allowed to one individual was limited to four square leagues, unless the grantee could satisfy the government that he required more for the use of his stock.

"On the 12th of July, 1834, the Congress of Sonora passed the 'Ley organica de hacienda No. 26.'

"This law made no material change of the law of 1825 except in fixing value of public lands. Grants made under these laws were conditional. They were to be occupied, and if abandoned beyond a certain time they were considered as vacant and denounceable, unless the abandonment was caused by the hostility of the neighboring savages; and the ley organica of 1824 provided that if the final title or grant had not been obtained by a petitioner for land, although all the preliminary proceedings had been regularly taken, the petitioner should present himself before the treasurer general within a certain time and show cause good why he had not obtained his title; otherwise the tract claimed by him should be considered vacant and denounceable.

"In granting or selling the public lands the government of the State of Sonora continued the system that had been established under the Spanish government. The same formalities were observed. The lands were surveyed, valued, published for thirty days, and at the end of which time they were sold at public auction to the highest bidder, the treasurer general of the State occupying the same position under the State government that the intendente did under the Spanish government, with this difference, however: the grant given by the treasurer general required no approval of the supreme government."

XIII. Honorable John Wasson, United States surveyor general for Arizona, has very carefully examined the Mexican laws and archives that have come before him in many cases adjudicated by him under the laws of the United States.

In his report on the case of Santiago Ainsa (now in the supreme court on appeal) he says :

"The State of Sonora, under the act of the Mexican congress of August 4, 1824, still claimed the public lands within her limits and still continued to dispose of them under the provisional law of 1825 and the organic law of 1834, both of which had been passed by the State legislature to regulate the disposition of the public lands granted to the State by the law of the Republic of August 4, 1824."

In his report upon the claim of Juan Pedro Camou, October 12, 1879, Mr. Wasson, as surveyor general, has gone into the whole subject of Mexican land grants in Arizona with faithful and industrious research and has stated the history of legislation there with great clearness and with conclusive effect as showing that the public lands in Sonora were the property of the State. The following quotations from his report show some of his statements and conclusions that are most pertinent to the question now under examination. He says :

"From the foregoing laws, ordinances, and decrees it is seen that the constant policy of Spain was to encourage by all means the settlement of her possessions in the new world; that while the absolute ownership of the *realengo* lands was retained by the Crown, laws from time to time were passed for the purpose of enabling the actual settlers to obtain titles to so much of these *realengo* lands as they required for their use and occupation in the pursuits of agriculture and stock-raising. Yet while the terms under which titles to these *realengo* lands could be obtained for actual use and occupation were made so easy as to be within reach of petitioners of humble means, still the government guarded with jealous care their disposition by passing such laws as made it *impossible for the vassals of the King to acquire them for any other purpose than that of actual use and occupation.*

"On the 4th of August, 1824, the sovereign constituent congress of the United States of Mexico passed a decree,

No. 70, in which are specified *the sources of revenue*, and the eleventh article of this decree recites—

“‘That the rents that are not included in the preceding articles of this decree belonged to the States.’

“As a compensation for this concession by the General Government, the sum of \$3,136,875 was required to be paid yearly by the States for the support of the General Government. This sum was apportioned to the different States according to population and wealth, the sum apportioned to the State of the West, embracing the Spanish provinces of Sonora and Sinaloa, being \$53,125. Under this law grants or sales of lands were made in the State of Sonora from 1824 down to the time when the system was changed by legislative enactment. * * *

“On the 20th of May, 1825, the constituent congress of the free, independent, and sovereign State of the West passed provisional law No. 30, regulating the system of *selling the public lands*.

“Under these provisional regulations the prices under which the public lands could be sold were graduated according to the location and quality of the land. The quantity allowed to one individual was limited to four square leagues, unless the applicant could satisfy the government that he required more for the use of his stock.

“Under this provision of the law the State of the West, in making grants or sales of land, continued the system that had been established by the Spanish government. The same formalities were observed. The lands were surveyed, valued, published for thirty days, and at the end of that time were sold at public auction to the highest bidder, the treasurer general of the State occupying the same position under the State government that the intendente did under the Spanish government. Between the time when grants ceased to be made within the jurisdiction of the intendencia of Sonora and Sinaloa by the authorities of the Spanish government and the time when they were made by the authorities of the ‘Estado del Occidente,’ under the law of the general congress of 1824 and the provisional law of 1825, * * * the granting power was exercised by an officer entitled *comisario general provisional de hacienda credito publico y guerra*, whose headquarters were generally at Fuerto, a town in Sinaloa, near the northern boundary of the State, as shown by the records of the times.”

XIV. It was not until 11th July, 1834, that the laws of Sonora required an applicant for the purchase of lands to establish by three witnesses that he had the means with which to stock the lands.

It was not until January 4, 1813, and under a decree of that date that the Crown lands of Spain were offered for sale to the subjects of the kingdom in fee-simple under a general system of administration. Before that time such grants were by acts of royal grace, which were often subject to revocation. (Hall, Mex. Laws, §§ 89 and 90.)

This decree was a concession to the people, made as a peace measure, while the revolution under Miguel Hidalgo was in progress. The concession was *to the people from the Crown*, and they never surrendered it to the Republic. It was administered at Guadalajara by an intendencia for each of the western provinces, and was never under the jurisdiction of Viceroy O'Donohugh.

The turbulence of the times prevented an active resort to the advantages of this great concession of the Crown, by the people; still a number of purchases were made by Mexicans from their States. One of the oldest of these was made by Ignacio and Eulalia Elias as early as the 1st July, 1827.

Such a title as was sold to Elias and his sister Eulalia—paid for and held in possession by them and their devisees, successors, and assigns for 68 years, without question by the Mexican government during 26 years, or by the United States for 42 years—is deserving of some respect for its antiquity and might safely be upheld merely by prescription.

XV. As to the honest integrity of its ownership by Ignacio Elias and his sister Doña Eulalia Elias, no doubt can remain in the mind of any one who will read the last will of Curate Don Juan Elias and the disposition he made of his half of the movables on the Babacomari rancho and the uses to which it was dedicated. There is no possible impeachment

of their honesty in their dealings with this land. (See Record, p. 102, folio 169.)

The consideration paid for these lands by the successive vendees is a large sum of money, and their conduct in these transactions is not even the subject of criticism.

XVI. After the denial by the United States of the constitutional power of the State of Sonora to dispose of these lands, which is discussed in the foregoing pages, the question is raised, in this and other cases pending in this Court, whether the decree of Santa Anna, as president and dictator of Mexico, made on the 25th of November, 1853, annulled and destroyed the title of the Eliases to the Babacomari ranch granted, on their application, in 1827 and completed in 1832 by a deed in fee-simple and accompanied with *judicial possession* and actual occupancy.

The impression made by that decree upon the minds of the people and government was only a feeling of resentment, indignation, and disgust. On the 15th October, 1856, the constituent congress of Mexico declared this decree of Santa Anna null and condemned him and his ministers to personal responsibility, in their estates, for all the damage it had caused. It was denounced as a crime.

Santa Anna had then been president of Mexico five times without ever having served a full term. Others in turn had occupied that office, on some occasions for not more than a week. All these incumbents, whether their authority was *de facto* or *de jure*, attempted radical changes in the organic and general laws of Mexico, but their efforts were ultimately failures, and the constitutional republic has stood.

That the Government of the United States should now, through its courts, declare that Santa Anna in 1853 had *destroyed the constitution and abolished the Republic of Mexico* in order to open the way to the recovery of land sold to a Mexican by the State of Sonora in 1827 is a matter that deeply concerns our honor as a nation, our proper respect for a

sister republic, and our good faith in supporting the rights of Mexico and of Mexicans under our treaties of 1848 and 1853.

Such a decision, if made by our Supreme Court, must necessarily be of the deepest concern to the people of Mexico and to the States and the Federal Government of that "Republic of Republics."

The grounds on which such a decision is rested should be so clear and firm in justice, reason, and precedent and so supported in the history of republics that no room would be left to justify, even in the minds of the Mexican people, the traditional belief existing among them that in all his career the United States used Santa Anna as "a thorn in the flesh" of Mexico. There are some facts of history that are quoted in Mexico as justifying such a belief.

After the capture of Santa Anna at San Jacinto he was returned to Mexico in 1837 in a warship of the United States, and he then forcibly resumed the presidency. In the meantime Houston was elected and installed as president of Texas in October, 1836, and the independence of that Republic was acknowledged by the United States in March, 1837. Santa Anna held office as revolutionary provisional president from March to July, 1839. A new constitution for the Republic was promulgated in June, 1843, with Santa Anna as president. He was deposed and banished September 20, 1844, by Canalizo, who was deposed by Herréra in December, and his successor, General Paredes, assumed the presidency on December 30, 1845.

It was during the presidency of Paredes and while Santa Anna was in banishment in Cuba that our war with Mexico began. Early in that war the United States opened the way for Santa Anna's return to Mexico, when he again assumed the presidency and became general-in-chief of the army. After the capture of the city of Mexico, September 14, 1847, he resigned the presidency and went to Jamaica,

in April, 1848. He had no active participation in the negotiation of the treaty of Guadalupe Hidalgo.

In 1853 Santa Anna returned to Mexico under revolutionary auspices and was appointed president for one year. In that period he fomented another revolution and declared himself *president for life, with power to appoint his successor*, and with the title of "MOST SERENE HIGHNESS." He surely was most cool, if not most serene. The revolution of Aguilla followed, led by General Alvarez. Santa Anna signed an unconditional abdication and went into exile at Havana. He returned to Mexico during the French invasion and was made grand marshal of the empire by Maximilian. He was then implicated in a conspiracy against that alleged empire and again left Mexico. In 1867 he made his last attempt to gain power in Mexico, but was taken prisoner at Vera Cruz and condemned to death, from which sentence he was pardoned by Juarez, and he came again to the United States.

It is impossible to suppose that the romantic vagaries of such a soldier of fortune could impress their results in a permanent way upon the general land laws of a republic of sovereign States so as to overthrow them entirely and to destroy titles to land acquired under them, against the indignant protest of a nation that overthrew his power and expelled him from the country as an insurrectionist at the first moment that its military power could subdue him or drive him out.

In our own recent history much more regular and powerful actions taken by sovereign states under newly ordained constitutions were treated as nullities when the national constitution and laws resumed their actual authority. The precedents in our history do not sustain the doctrine that a *de facto* government has any retroactive power to destroy rights acquired under the permanent government *de jure*, within whose limits it may have been tolerated for a time on the ground of public necessity or of the *vis major*. Its

jurisdiction over all subjects is confined strictly to the period of its existence and to such acts only as grow out of the law of necessity.

But it will be unfortunate, to say the least, if our Supreme Court should feel compelled to hold that the decree of Santa Anna of November 25, 1853, was a repeal of the whole system of laws enacted by the Federal Congress and by the State legislatures back to 1824, disposing of lands and granting and confirming titles, and that it should be upheld as the lawful destruction of the most important and sacred vested rights.

We shall not escape criticism as a Government if such effect is given to his decree, *made while he was conducting the negotiations that resulted in the Gadsden treaty*. The \$10,000,000 paid by the United States to him for this territory, of which \$7,000,000 was paid on the 30th of June, 1854, before Santa Anna's expulsion from the presidency, was a large fund with which to promote the imperial designs of "His Most Serene Highness," the president for life, with power to appoint his successor.

XVII. It must be assumed, as it is clearly susceptible of demonstration, that the United States was not in sympathy with this treasonable ambition, this imitation of the usurpations of the First Consul. The decree of November 25, 1853, was made by Santa Anna one month after the American plenipotentiaries had signed the Gadsden treaty, and articles V and VI of that treaty saved the people of the ceded country from a scheme of monstrous ambition which was to add to the \$10,000,000 in cash the whole of the public lands in Mexico, including those that had been sold or granted by the States since 1825, as a fund for the subjugation of Mexico. A more imperial plan for concentrating all the sources of public revenue in the grasp of "His Most Serene Highness" was never laid by ambitious power seeking an imperial scepter.

Mexico, in her struggles to escape from royal and imperial power and to establish a republic, never had an antagonist who was shrewder, more persistent, or more unscrupulous than Santa Anna. She repudiated his plan of 1853 with hot resentment, and it remains for the United States, it seems, to sustain it as being lawful and obligatory on Mexico and as being worthy of our respect as a republic.

XVIII. The territory ceded by the Gadsden treaty was, as to the rights of property of the inhabitants, preserved in the same condition with those of the territory ceded in the treaty of Guadalupe Hidalgo.

In that treaty the utmost care was taken to provide for the preservation, protection, and security of "the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the tenth article of the treaty, preserve the legal value they may possess, and the grantees may cause their legitimate titles to be acknowledged before the American tribunals."

"Conformably to the laws of the United States, legitimate titles to every description of property, personal and real, existing in the ceded territories are those which were legitimate titles under Mexican law in California and New Mexico up to the 13th of May, 1846, and in Texas up to the 2d of March, 1846."

(See the treaty and protocol.)

These safeguards are provided in a protocol to the treaty of 1848 and were signed on the part of the United States by A. H. Sevier and Nathan Clifford, one of the great American jurists who once sat in this Court and was eminent for his learning and his high sense of justice. It is almost pathetic to recall, in the language used in this protocol, the apprehensions of danger to Mexicans, thus expatriated, from the possible effects of the many revolutionary changes in government and of rulers that had occurred in that country while struggling nobly for a free constitutional republic.

The titles to property that are protected under the treaty of 1848 "were those which were legitimate titles under the Mexican laws." "The American Government * * * did not in any way intend to annul the grants of lands made by Mexico in the ceded territories, * * * and the grantees may cause their legitimate titles to be acknowledged before the American tribunals." These are broad and solemn guaranties.

These are treaty rights, and they are valid, though they might even contravene the constructions we might otherwise place on Mexican laws and constitutions, or the international law or our ideas of justice or sound public policy. Neither were they left open to litigation in the courts of the United States as mere equities or rights of action. They might not prevail under the common law of England, or the civil law as it is interpreted by American jurists. They might not be perfect titles or perfect equities under the laws of the United States, or they might suffer from technical questioning as to the effect that frequent revolutions may have had upon them, but they were *legitimized* under the Mexican regime and were "*legitimate titles* under Mexican law" and usage, and as such the right to have them "acknowledged before the American tribunals" is a treaty right and not merely a right to recover them by the judgment of a court in a suit against the United States, with all its powers as a legislator or litigant.

A "legitimate title" under Mexican law may be and is quite a different thing from a perfect title under our common law or even a perfect equity in our chancery law.

XIX. When we came to negotiate the Gadsden purchase with "His Most Serene Highness" Santa Anna, we evidently shrank from allowing his guardianship of the Mexican people and doubted the integrity of his care for them, so we provided that his assumed power over the ceded lands and the people who owned them should be cut off by placing

them in the exact situation and putting them under the identical conditions that the lands and the people were left in by the treaty of Guadalupe Hidalgo, which had been concluded five years before the date of the Gadsden treaty. That situation antedated and excluded his power to dispose of these lands or the rights of these people by his ruthless disregard of Mexican constitutions and laws.

The fifth article of the Gadsden treaty is as follows :

"All the provisions of the eighth and ninth, sixteenth, and seventeenth articles of the treaty of Guadalupe Hidalgo shall apply to the territory ceded by the Mexican Republic in the first article of the present treaty and to all the rights of persons and property, both civil and ecclesiastical, within the same as fully and effectually as if said articles were again recited and set forth."

And, to cut off "His Most Serene Highness" Santa Anna from the power to sweep all lands and land titles into his treasury, there was added article VI, in these words :

"No grants of land within the territory ceded by the first article of this treaty, bearing date subsequent to the day (twenty-fifth of September) when the minister and subscriber to this treaty on the part of the United States proposed to the government of Mexico to terminate the question of boundary, will be considered valid or be recognized by the United States, nor will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico."

The expatriated people and their lands within the limits of the Gadsden purchase were protected, as they were under the treaty of Guadalupe Hidalgo, *and the right of Mexico to change that status ceased on the 25th of September, 1853*, one month before Santa Anna attempted to convey all the public lands in Mexico into his official ownership and dominion. The United States fixed this date in the Gadsden treaty (September 25, 1853) as the period that should terminate

the power of Mexico to alter the legal status of the land, if not of the people, in the ceded territory.

Whatever power Santa Anna may have had over the constitution, laws, public domain, and land titles in Mexico on the 25th of November, 1853, he could not interfere with these matters in the ceded territories without a total breach of articles 5 and 6 of the Gadsden treaty..

The light thrown upon this question by the decisions of the court of private land claims is neutralized by the fact that they decided the matter one way in some of the cases before them and quite the reverse in other cases. It is "*lucus a non lucendo*."

XX. The present attitude of the United States towards the examination and allowance of grants of land made by Mexico in the ceded territory is different from its former manner of dealing with this subject. For the first time, by the act of March 3, 1891, the United States provided a tribunal that could make a conclusive "acknowledgment" of the titles of legitimate grantees of the Mexican government existing in the ceded territory in Arizona, as provided for in the protocol of the treaty of Guadalupe Hidalgo and in articles V and VI of the Gadsden treaty. This relief was provided nearly forty years after the cession. In this long interval of time the claimants were required to submit their claims for examination to the surveyor general of Arizona, who was required to submit his report to Congress, through the Secretary of the Interior, for ratification or disapproval. Congress wisely forebore to assume this purely judicial function, and the favorable reports of the surveyor general on Perrin's case and many others, along with the unfavorable reports made in some cases, were alike held in abeyance, and the grantees were thus refused the rights that were guaranteed to them in the treaties. In the meantime there was permitted to congregate on these lands numbers of desperate and lawless squatters, who in many instances slew

the agents of the claimants and the agents and surveyors of the Government in order to enforce their trespass with bloodshed.

Congress, in the act of March 3, 1891, has not only legalized this violent seizure of these lands, but provides that ten years' possession of them shall work forfeiture of the title of the legitimate owners.

The difficulty of proving a continuance of possession under such conditions is also construed by some of the courts as presumptive evidence of abandonment of the grant.

XXI. Perrin's claim, dating back to 1827 and instituted by Ignacio Elias and his sister, Doña Eulalia Elias, citizens of Sonora, of very high character and family connections, was presented to and decided, upon full proofs, by Mr. Wasson, surveyor general for the district of Arizona, and was referred for final action to Congress by the Secretary of the Interior.

It remained in committee, without any action being taken upon it, until Perrin was forced by the act of March 3, 1891, to go into court and litigate his title with the United States and with the outlaws, sheltered by departmental rulings, who held forcible possession of his property with arms and violence and are now set up by act of the law as being presumptively *bona fide* holders of the possession.

No plea is made here to shelter Perrin's rights because of the delay and obstruction thus put in his way by the Government, but the conscience of this Court of equity is appealed to that his title shall not be defeated on grounds that are technical merely; that do not affect the integrity of the acts of the Mexican authorities in making the sale of these lands, or of the original purchasers, or any of their assigns in buying them.

XXII. The act of March 3, 1891, creates a lawful court of equity, with full chancery powers to hear and finally deter-

mine these titles as between the claimants and the United States and to execute the decree, and, lest the inferior court should be dissolved on the 31st of December, 1895, or unless it might for any reason founded in justice become necessary, section 9 of this act provides that—

“On any such appeal the Supreme Court shall retry the cause, as well on issues of fact as of law, and may cause testimony to be taken in addition to that given in the court below and may amend the record of the proceedings below as truth and justice may require, and on such retrial and hearing every question shall be open and the decision of the Supreme Court thereon shall be final and conclusive.”

The fifteenth section repeals all existing acts for that Territory relating to the adjudication of land titles under the treaties with Mexico. The whole act confers and regulates jurisdiction of the courts, including the Supreme Court, in accordance with the jurisdiction and practice of courts of equity of the United States, a jurisdiction analogous to that of removing clouds from titles and of compelling conveyances, where the equity is perfect, and of reforming defects in titles, good at common law, arising from the neglect, ignorance, or clerical misprision of the officers engaged in making the grants.

Within the limits of the jurisdiction conferred, the powers of the courts, as courts of equity, are plenary.

The legal scope and basis of the adjudication to be made by these courts in these cases are “the law of nations,” “the stipulations of the treaties,” * * * “and the laws and ordinances of the government from which it is alleged to have been derived, and all other questions arising between the claimants or other parties in the case and the United States.”

In the restrictions placed by section 13 of this act upon the character of the title that may be confirmed by the decree of the court it is provided that—

"No claim shall be allowed that shall not appear to be upon a title lawfully derived from the government of Spain or Mexico or from any of the States of Mexico having lawful authority to make grants of land."

In this provision the language of the statute conforms to the spirit of the treaties and expressly includes *titles acquired from the States of Mexico having lawful authority to make grants of land.*

From that language as well as from what follows in the same paragraph of the law a title issued by a State may be considered "legitimate" under the treaties, and it is the right of a claimant to have it "acknowledged before the American tribunals" if it was regarded in Mexico as one of the "legitimate titles under the Mexican law" up to the 25th of September, 1853. Then the act of 1891 provides that if the title was "not then complete and perfect at the date of the acquisition of the Territory by the United States the claimant *would have had* a lawful right to make it perfect had the Territory not been acquired by the United States, and that the United States are bound upon the principles of the public law or by the provisions of the treaty of cession to respect and permit to become complete and perfect if the same was not at said date already complete."

XXIII. Mexico never denied to Sonora the right to sell her lands to her people, either in practice or usage or by any declaration to the contrary, and she took the most solicitous care in these treaties that her people whom she was sorrowfully expatriating should have all their rights and equities respected by the United States as she would have respected them had not her poverty and distress compelled her to transfer their government into other hands.

Such is the law, the testimony, and the history as they are established in this case.

XXIV. This Court, in *Ableman vs. Booth*, 21 How., 525, say "the highest honor of sovereignty is untarnished faith." This doctrine, applied to Mexico in her dealings with Elias and his sister, would compel the governments both of Sonora and Mexico not only to confirm a title that was honestly purchased and paid for, but also to refuse to take any technical advantage which might be discovered in the imperfect regulations as to surveys or as to platting the grant or in surveying the same, which was the fault alone of the laws or regulations, or was attributable to the want of skill in the surveyor selected by the government; and *the equity powers* conferred by statute on the courts in these cases should not fail to cure such defects when they are within reach of equitable adjustment.

In the tardy effort of Congress to perform a duty enjoined by these treaties the jurisdiction and powers of the court of private land claims were greatly enlarged above those provided in any of the laws previously enacted for the settlement of Mexican land-grant claims. This was done to give full effect to the just doctrines established in many decisions in like cases by this Court, and the reference in the treaty of 1848 to the "Louisiana treaty" applies those decisions to these land claims.

XXV. The grant to the Eliases was a completed grant and a deed in fee was delivered to them by the treasurer general of Sonora, José Maria Mendoza.

United States vs. Moorehead, 1 Black, 227.

There was juridical possession that completed the acts of the alcalde surveyor in surveying and valuing the lands. It is the judgment of a competent officer that the purchaser of the land is invested with the lawful possession of the tract described in the survey.

The necessity, if it exists, for a further and more accurate survey to locate the grant on the ground and to demark its

precise boundaries does not impeach or affect the validity of the grant.

McDonough vs. Millaudon, 3 How., 693.

Alviso vs. The United States, 8 Wall., 337.

United States vs. Vallejo, 1 Wall., 658.

Graham vs. The United States, 4 Wall., 259.

The effect of a land grant in Mexico must be determined by Mexican law.

Steinbach vs. Stewart, 11 Wall., 566.

XXVI. The surveys in Mexico under all the successive governments have been made by private persons, or by alcaldes who had more or less skill as surveyors. There are no government surveys or surveyors except under special appointment; hence the designation of the location of a grant by the name of the place, or by the boundaries of adjacent grants, or by natural objects of a permanent sort, or by metes and bounds marked by crosses, heaps of stones, or built-up monuments, were not only common, but were almost universal in the desert land of the north of Mexico, along the Gila, Colorado, and San Pedro and other water-courses, and swamps (called *sienegas*). In Perrin's case all of these methods of description were used, and fourteen landmarks are given and perfectly identified. The starting point of the survey is a well-known *sienega* or pond on the rancho then well known as the place named "San Ignacio del Babacomari," in the presidio of Santa Cruz, being the vacant land adjoining the Rancho San Pedro. These landmarks are stated in the paper furnished by Mr. Hopkins, and, in connection with the sketch he has given of them, they are easy to be understood.

In a country where there are so few springs, ponds, swamps, and tanks of water and so devoid of forest trees, and where the hills were so distinguishable and were so carefully placed and noted as features of the topography in

the valley of the Babacomari creek, adjoining San Pedro ranch, there could be no real difficulty *as to its location*. Subsequent surveys made recently by Mr. Roskrige located every one of these natural objects, and the photographs in evidence show the heaps of stone that still mark the boundaries at the various points made in the survey of the alcalde and his assisting witnesses, all of whom were acting under oath.

The proceedings of the survey are set forth literally, as they occurred, in the expediente and final title papers, and the deed recites that the grantees "*are to subject and limit themselves to the land, its appurtenances, metes, and bounds set out specifically in the proceedings of the measurements hereinbefore set out.*"

This deed was issued upon a report made by the attorney general on the 20th of December, 1828, to the treasurer general as follows :

"To the Treasurer General :

"This expediente contains the survey of 8 sitios of land for breeding horned cattle and horses, executed by the alcalde of Santa Cruz, in the places of San Ignacio del Babacomari. I find nothing in the proceedings to prevent adjudication of the land to the petitioners, unless it be that the quantity exceeds that mentioned in article 21 of the decree of 20th May, 1825; but if your honor is satisfied as to the requirements recited in the 22d, I am of opinion that the land be sold to the denouncers if there should be no one willing to pay a higher price for the same."

Under this law of Sonora of May 20, 1825, the government, acting by the treasurer general, could grant more than four sitios (square leagues) of land to one applicant if satisfied that he required more for the use of his stock. To obtain the advantage of this provision of law the two Eliases—Ignacio and Eulalia—joined with Don Rafael Elias, Captain Ignacio Elias, and Don Nepomucena Feliz, in the denunciation (claim as being vacant) of "the vacant tract of land

adjoining the rancho of San Pedro, situated in the jurisdiction of the presidio of Santa Cruz, as far as the place Tres Almos." Said denouncers petitioned for certain tracts of this large area, either jointly or separately. Ignacio Elias and his sister Eulalia jointly petitioned for the place called Babacomari, but did not limit their claim to four sitios each.

The evidence in this case proves that excellent reasons for this claim in this form existed, *which were of advantage to the government as well as the petitioners*. They were the following: (1) The tract of land was only fit for grazing; (2) Babacomari creek ran through almost its entire length; (3) it had springs at both the eastern and western boundaries and a sienega near the center; (4) it was nearly surrounded by mountains, so that no other grazing ranch was really possible in the valley of the Babacomari, and (5) it was in a desert region that was infested with Yuma and Apache Indians, who were savage, warlike, and implacable. It required a strong military force to hold the ranch; so much so that the United States, after the cession of this country, was compelled to erect a fort—Crittenden—within a few miles of Babacomari to shelter the few people who lived in the surrounding region.

Sonora had a strong motive to have that great area of desert country under the protection of this strong combination that jointly undertook to protect this frontier from those savages.

If there could exist sound reasons of public policy for making these grants in larger bodies than four sitios each, they were abundant and were wisely and patriotically consulted by the government of Sonora when it sold the Rancho Ignacio del Babacomari to the Eliases by metes and bounds without having required accurate measurement of the eight sitios. They were surveyed by unskilled men, selected by the government, with a mariner's compass, and were measured by men on horseback, after a fashion, where the

ground was smooth, and computed (guessed at) in the places where it was broken. This would have been a most uncertain and faulty survey if actual measurement of the land had been attempted or had been required by the government, but it was not. The facts were all faithfully stated in the report of the *alcalde*. That report was considered and commented upon by the attorney general, and it was considered *and adjudicated* by the treasurer general, who confirmed it, and he executed the deed conveying the title according to the uncertain and crude measurement and the metes and bounds as they were described by natural objects and by artificial monuments, as these defects were set forth in the careful report of the *alcalde*.

That was the Mexican way of disposing of the lands in their desert regions to induce men to enter upon hazardous pursuits in a region beset with savages, and that is enough to make such a survey the basis of a "legitimate title under the Mexican law."

It is also enough to form a basis for an adjudication which will fully and fairly meet our pledge in the protocol to the treaty of 1848 that "the American Government, by suppressing the Xth article of the treaty of Guadalupe, did not in any way intend to annul the grants of lands made by Mexico in the ceded territories."

It may be well added that the Mexican way of surveying such regions, under such circumstances, is better than our way of cross-barring them with rigid lines that have no reference to their utility.

XXVII. The lines of this grant have been ascertained by triangulations from the known and unmistakable objects indicated and described in the report of the *alcalde*, made in October, 1828, and have been compared and platted in connection and in correspondence with the United States Government surveys. There is no real uncertainty about them.

Mr. Flipper has conveniently criticised the courses and bearings stated by the alcalde in his report of his compass-work in making the survey, and he seems to fancy that he has demonstrated that it is absurd and cannot be read or followed. Mr. Flipper has simply been misled by an incorrect translation of those statements, or by the illiteracy of the surveyor. The surveyor general found no such difficulty when this claim was pending before him. The courses, correctly translated, lead from the central point of the survey, at the sienega of Babacomari, directly to the natural objects and the monuments described by the alcalde surveyor in his report of the facts touching the survey, and all those objects remain in their proper bearings to this day and indicate with reasonable certainty the location of the grant and all its exterior borders. In seventy-five years no other grant is found to conflict with this.

XXVIII. Mexican surveys are made under a system that differs radically from ours. Our surveys are first made and mapped by the Government before the land is put on the market. They are located, measured, mapped, approved, and recorded, and they then become the exact legal definition of the grant, which is made with sole reference to the maps, by numbers. Until all this final adjudication of boundaries is completed a private person cannot get a title. If more or less than the proper number of acres is found in any legal subdivisions of lands thus ascertained, the gain or the loss is the purchaser's. The survey and the patent are a final and conclusive adjudication as to the location and area of the land, binding the Government, the purchaser, and the courts as a judgment binds them.

Stone vs. United States, 2 Wall., 525.

Marquez vs. Frisbee, 101 U. S., 473.

Maguire vs. Tyler, 1 Black, 195.

In Mexico, there being no general system of land surveys, the location and boundaries of each grant is made separately under the supervision of a *judicial officer*, an *alcalde*, who is authorized by the State to make the survey of the particular tract. The survey may embrace any quantity of land, from one vara to eleven leagues. Notice of the survey is given to the neighboring proprietors that they may object if they see fit or assert any adverse claim, and this brings the government, and all claimants before the *alcalde* as a *judicial officer*, who gives public notice of the place of assembling and the day when the survey will be made. All the assistants are duly sworn and the *alcalde* keeps a complete record of the proceedings each day during the survey. He adjudicates the survey and reports his judgment to the attorney general. He also adjudicates it and reports his judgment to the treasurer general. He also adjudicates, and, if he confirms the survey, the land is then publicly offered for sale by the public crier on three several days, and the *junta*, consisting of three public officers, adjudicates the sale and confirms it. The purchase-money is paid into the treasury, and thereupon the treasurer general adjudges the title to the purchaser in pursuance of the survey.

In these proceedings there is much more of judicial hearing, action, and decision than there is under our system, yet our adjudications by ministerial officers as to the acres contained in a subdivision of lands, whether the same is stated truly or falsely in the survey, is held to be final and conclusive.

Is there any sound or safe reason why we, in judging of a "legitimate title" under Mexican law, should not give validity to it when it has passed under four separate adjudications by different tribunals and has been confirmed by each? The identification of the tract of land, by location, name, and boundaries, with the tract described in the petition, survey, confirmation and sale, is complete and unmistakable, and if the eight sitios of land therein described as

a sort of framework of the survey contain a great excess of land, yet if there is no fraud, no overreaching, no concealment, no violation of the public policy of Mexico, to vitiate the adjudication, the sale, or the deed of final conveyance, the conveyance is valid. Mexico treated it as being valid for 28 years, and would not, could not, now annul this conveyance if it still owned the country. The United States has not objected to its validity for nearly forty years, since the Gadsden treaty, and can only do so now by denying to the claimants the benefit of adjudged and settled principles of law, which we apply in our own public-land system, as is shown in the cases above cited.

XXIX. Here are boundaries, fixed by solemn adjudications of sworn officers, made judicially, in a controversy between Sonora and two of her citizens, and located by permanent and natural objects, the calls for which in the survey are carefully, clearly, and unmistakably set down in the record of the survey made and certified by a judicial officer, his assistants also being under oath. This is not only "legitimate" under Mexican law, but it is strictly legal and conclusive under the laws of the United States.

In *Morrow vs. Whitney*, 95 U. S., 551, it is held that, in ascertaining boundaries of surveys or patents, the rule is that wherever natural or permanent objects are embraced in the calls these have absolute control and both courses and distances must yield to their influence.

The supreme court of California has made most careful and learned examination of these questions of survey as they have arisen in Mexican land-grant cases. Almost every Mexican land grant in California presents these inquiries. Every phase of such questions appears to have been considered by that court, and the principles settled in those cases fully justify the position that the grant or sale of the place Ignacio del Babacomari is valid. The following citations, in addition to the decisions in the Supreme

Court of the United States, are relied upon as fully and clearly establishing the validity of this conveyance:

"Natural or artificial monuments, as a rule, will control courses, distances, and quantity."

10 Cal., 590; 12 Cal., 148; 22 Cal., 497; 24 Cal., 436;
26 Cal., 616; 28 Cal., 175; 29 Cal., 172; 30 Cal., 480;
32 Cal., 220; 34 Cal., 334; 37 Cal., 432; 38 Cal., 481;
39 Cal., 612; 42 Cal., 327; 43 Cal., 390; 45 Cal., 273;
47 Cal., 52; 50 Cal., 333; 51 Cal., 128.

"False or inapplicable clauses in contradictory description repugnant to interest, will be rejected if enough remains to identify."

25 Cal., 297; 27 Cal., 58; 34 Cal., 624; 35 Cal., 152;
36 Cal., 606; 37 Cal., 432; 41 Cal., 264; 47 Cal., 52;
66 Cal., 16.

"In case of clear mistake or absurdity, an inferior means of location will control a higher one."

10 Cal., 590; 34 Cal., 334; 36 Cal., 606; 38 Cal., 481;
44 Cal., 132; 47 Cal., 67; 55 Cal., 567; 58 Cal., 306;
66 Cal., 16.

"Intention governs."

10 Cal., 590; 12 Cal., 212; 16 Cal., 230; 18 Cal., 138;
25 Cal., 297; 29 Cal., 386; 32 Cal., 220; 34 Cal., 334;
35 Cal., 152; 36 Cal., 606; 37 Cal., 432; 38 Cal., 481;
44 Cal., 132; 47 Cal., 526; 55 Cal., 567; 58 Cal., 306.

"Description by name may control erroneous description by metes and bounds."

44 Cal., 132.

"Quantity may control name."

47 Cal., 67.

"Land must be as near rectangular as possible if courses are not specified."

25 Cal., 142-143; 66 Cal., 379.

XXX. The interest of Mexico in the intrinsic value of those arid, desert lands in Arizona was so trifling in comparison with her vital public policy of establishing a barrier against the incursions of the savage Indians then dominating the northern frontier of Sonora, that it is not "legitimate" that we should now hold that an excess of acres of land within the calls of the deed to these grantees should prevail to defeat the grant, when both the courses and the distances stated in the record of the survey are compelled to yield to the natural and permanent objects embraced in the calls.

Higuera *vs.* United States, 5 Wall., 827.

The motive of the Mexican policy of pushing settlements up to the northern frontier of Sonora in the early days of the Republic and in maintaining them there by large grants of land in that quarter is illustrated by the requirements of the condition subsequent imposed on those grantees, that they should continue to occupy the lands except when they were interfered with by public enemies. The grantees became public servants to sustain this policy and deserve to have all the land they got.

In grazing lands that are not fenced and are never expected to be enclosed, the pasturage of adjoining lands is as available to the stock-grower as those included in his deeds, and it was a very inconsiderable matter to any one whether the place called the Rancho Ignacio del Babacomari contained more or less than eight square leagues.

"The positive qualification and precise condition that they have to keep the said sitios occupied, settled, and protected, the same not to be abandoned or deserted nor left unprotected for any time whatever," was not such a dependent condition as worked a forfeiture of the title to the State *ipso facto* if the condition was not performed. It was a duty to the State based on the consideration of the grant, for the performance of which the State had the right and power to hold the grantee responsible, "and if the same should be

abandoned totally for the space of three consecutive years and there should be some one else who should denounce the same, in such an event the same shall be pronounced vacant and shall be adjudicated anew to the highest bidder." The grant was to stand. It did not revert, but a new bidder was to take it. This was a forfeiture that could only affect the title after office found. As there has been no such proceeding (and there could not be in the United States to enforce a forfeiture to Mexico), the supposed condition subsequent could not in the least affect the title of the grantees or their assigns. The title stands in the exact condition in which it was found at the date when the Gadsden treaty went into effect. It had not then been adjudicated as being forfeited to another purchaser at a public bidding and could not have been so adjudicated until some citizen of Mexico had first denounced the land as being forfeited by abandonment and had offered to bid for it. If such proceeding had been instituted, it could not have prevailed on the evidence in this record. It is confiscation and not a forfeiture for condition broken that this law provides for.

Gonzales vs. Ross, 120 U. S., 605.

XXXI. Nothing is shown in the nature of an abandonment or desertion of the grant, and even the occasional absences of the herdsmen and others in charge of the ranch are excused by the further provision in the deed, "excepting, as is just, in those cases in which the abandonment is due to the notorious invasion of enemies and only for the period of such occurrences." Each of such invasions, however, would excuse an abandonment for the period of three years from its occurrence. The State also assumed the duty of protecting these grantees "in the quiet and peaceful possession to which they are entitled by legitimate right." This was not done. The Indians were constantly on the warpath, and Elias had to march bodies of armed men to his rancho in order to mark and brand his cattle and take them to market.

The evidence shows that he supplied food to the people of the surrounding country and to the troops in that region of country, and was of great advantage to the public. Our own experience in the effort to save Arizona from the outbursts of the Apaches and Yumas shows the great difficulty and extent of the task, to which Mexico was wholly inadequate. The millions we have spent in quelling the partisan wars of Geronimo alone and our failure for many years in suppressing and capturing him are a full answer to any suggestion that Elias could have continuously held peaceable possession of Babacomari from 1828 to 1853.

XXXII. Under the constitutions of 1824 and 1836 the power to dispose of the public lands not in the Territories was not defined in the national organic law of Mexico. The right of property in the public lands within the States was left to follow the powers of sovereignty, except for the purposes of colonization by grants to families of immigrants, or to *empressarios*. The constitution of 1836 contains provisions, in the sixth law, article 1, that authorize changes to be made in any of its articles after six years. It was, in fact, provisional and was intended, like the French consulate, to give repose to the country until the people could consider some grave questions of reformation and reconstruction that affected the peace and permanent welfare of the Republic. It did not abolish the Republic, but suspended the functions of some of its departments and officers until these reforms could be considered.

In doing this the central powers were declared supreme in the several departments—the legislative, conservative, executive, and judicial departments separately—but these were not united or aggregated into an “entity” which was in itself a sovereign government.

The constitution of October 4, 1824, does not declare that the national government established by it is either *sovereign* or *supreme*. It only declares that “The Mexican nation is

forever free and independent of the Spanish government and all other powers whatever," while the constitutive act of January 31, 1824, declares, in article 6, that "Its integral parts (the States) are free, sovereign, and independent in whatsoever belongs to their internal administration and government," etc.

In the constitution of 1857, in article 39, it is ordained that "The national sovereignty resides in the people. All public power emanates from the people and is instituted for their benefit. The people have at all times the inalienable right of altering or modifying the form of government."

The following is the limitation on the powers of the States and the Federal Government in the present constitution :

"Art. 117. The powers that are not expressly granted by this constitution to the Federal Government are understood as reserved to the States."

As the power to dispose of land belongs to sovereignty and was not expressly granted to the Federal Government, and as sovereignty resides in the people and all government is for their benefit, and as this power was "reserved to the States," there is no ground for claiming that the lands in the States belong to or are subject to the disposal of the States.

But if clause 24 of article 72 of the present constitution gives Congress the power "to fix the rules to which the occupation and alienation of the public lands ought to be subject and the price of said lands," and if this power may be thus exercised within the States, it does not follow that grants previously made by the States were *ultra vires*.

The principles declared, as above quoted from the constitution of 1824, are quite to the reverse.

XXXIII. The most that can be justly said about the situation is this: That a dispute existed as to the ownership of the lands within the States that no constitution had ever ex-

pressly settled, and it was manifestly important that it should be settled.

In the constitution of 1875 all public lands *en masse* were made subject *for the first time* to rules to be fixed by Congress, but neither the rules nor any basis for them were stated *in the constitution*. That was left open for the congress, all of whose membership came from the States, in the senate, and from the people, in the chamber of deputies, who would, of course, care for the interests of the States.

The purpose of all this new arrangement was to compose the differences between the States and the Federal Government as to their respective interests in the "rentes"—the proceeds of the sales of the public lands—not in the sovereign ownership of them. That was a matter, long in dispute, growing out of the powers of the Federal Government over the national question of colonization reserved in the constitutive act of August 18, 1824, which extended to the control of lands within the States, for that purpose.

The States really settled for this claim and paid for it in the assessments made upon them in the decree of the constituent congress of the 4th of August, 1824, and they are virtually required to pay for their vacant lands again by the law of July 20, 1863, and of May 30, 1868, whose article 5 fixes as the revenue of the Federal Government derived from the sales, "*the half of the proceeds of the sale, lease, or exploitation of the public lands, all in the Republic (including the territories and the confiscated church lands), the other half being for the benefit of the States in whose territory they are situated.*"

This was a compromise that the States could well afford to make, as well for the settlement of a very sore question as for the advantage of their revenue. The increase of the value of vacant lands under the regime of Juarez and Diaz was a vast gain to the States that came in under this law of May 30, 1868, for half the proceeds of the sales of all the vacant lands in Mexico.

This arrangement was not in any sense retroactive, but had it been it could not affect rights that were withdrawn from the jurisdiction of Mexico by the Gadsden treaty; yet the argument that is deduced from it proves that in Mexico *it required a change in the national constitution* to give to the Federal Government the *jus disponendi* over the vacant public lands in Sonora.

XXXIV. The surveyor general, Mr. Wasson, found no difficulty in ascertaining the definite location of the Babacomari grant, though he confined its measurement to eight sitios or square leagues of land.

In this he overlooked the fact that the report of the Attorney General made upon the survey of the alcalde and his field-notes called for a larger area of land, and the further fact that the law gave to the officers who located and confirmed the grant the right to enlarge the area granted when it was needed for the purposes of stock-raising. (See Report of Felipe Gil, Record, p. 77, and Law of Sonora No. 30, May 20, 1825.)

The intention was to obtain a rancho with water for raising horses and cattle. There was not then in Mexico, if there is now, any law that required all measurements of lands when offered for sale to be made in square leagues. The Babacomari rancho occupied a small valley of the creek of that name, with high and arid lands on three sides of the area, and, the intention being to secure the running water, the lines were projected with that view, which would have been frustrated if each league was required to be square. In many cases grants have been confirmed, properly, where the lands were bounded on all sides by former surveys which had been deeded to private owners, and it was impossible to find space between them for a square league of land.

XXXV. Mr. Flipper, who is a "squatter" and is identified with them in these cases and questions, is a standing witness for the Government in nearly all of these cases. He proves broadly and at large for the Government and is equally expert, active, and decided on questions of survey, the reading of the compass, the translation of laws and documents, the forms of proceeding in land sales in Mexico, and in his learning in the interpretation of laws. His opinions would settle every question in favor of the Government of the United States as a claimant of these lands and the squatter as the beneficiary, and would relieve our country of the delicate duty of deciding, in its own courts and under its own laws and for its own profit, these questions relating to property rights under treaties of cession made to it.

The appellant cannot accord to Mr. Flipper infallibility or impartiality in these matters. He is expressly contradicted as to the statement that the proceedings in Elias' grant were not on stamped paper. While he denies the possibility that the Elias survey can be located on the ground by the field-notes, Roskrige, who surveyed that whole country, testifies that he without difficulty found thirteen out of fourteen monuments and natural objects described and located in the calls of the survey of the alcalde.

Flipper also found monuments in the places where the survey located them, the same that are pictured in the photographic exhibits in this case, and then he brushes them away with his airy opinion that they were Indian monuments. The hills crowned with oak trees and others with stones, and a high hill that was isolated from all others; the hot spring with the west center monument near it; the cottonwood tree in the little valley were all seen by Flipper and could not be brushed away with an opinion. So he pretends to have found two hot springs, at one of which, several miles from the other, there was no monument, and he states that as a fact, in which no one else sustains him, to prove that a hot spring in that arid country is too indefinite

a thing to stand for a landmark. Flipper is the only person who attempts to discredit the alcalde's survey and field-notes, and his chief point is that he could not follow the reverse lines or "back sights" of the alcalde surveyor, as he described them in his field-notes, in a demonstration on a blackboard.

Flipper could not deny that the courses taken and recorded by the surveyor would lead to the landmarks and the monuments if they were followed; but he finds that the alcalde, by using one letter for another in his imperfect description of the "back-sight" course, made a confusion in the survey.

It was not necessary to the accuracy of the survey that the alcalde should state the reverse direction of the courses on which he made his survey and measurements, but in doing so he confused Mr. Flipper so greatly that he could not see anything "honest or of good report" in any feature of Perrin's case.

Mr. Flipper visited Hermosillo to find flaws in the Babacomari grant, and, finding none of any importance, and misstating some he imagined he had found, he visited the ranch to look for defects in the survey. He found the same "calls" in the document at Hermosillo as those in the document in evidence before the court. He says (Record, p. 50), "Some of the calls are impossible," meaning, as his statement shows, that some of the reverse courses, back sightings, are in directions that are tangents to the "courses" as they are stated in the field-notes, but he found the rancho and the creek Babacomari and the sienega, which is the central point of the survey, and three piles of stones 300 yards from it, on a line nearly east and west, 3 feet across and 8 x 8 inches, and he found "Monkey springs," and about 200 yards west of it he found a pile of stones on top of a hill, and a bald hill. Then, on page 54 of the Record, he broke away from a plain question, on cross-examination, in hot temper, saying, "It is impossible to know what that

call means. Your translator did not know what it meant. It has been corrected in your translation a dozen times" (which is not true); "'southeast quarter southwest.' You have got to jump from the east and pass the south cardinal point to get to the west. It is impossible," showing that the difficulty is in the translation of the field-notes of the alcalde, or in Mr. Flipper's interest in the defeat of these grants.

The next question put to him is :

"Q. You, in fact, went to the east center monument, as set out in Roskrugs's survey ?

"A. Yes, sir.

"Q. Did you look at that natural object *as called for in the expediente* ?

"A. It calls for a rocky hill. There is a rocky hill there."

He says he "went over the center line." How did he find that line? And he went to no other place or corner or monument except as above stated. (See Record, pages 54 and 55.)

Even this meager examination by Flipper confirms Roskrugs's statements and his map so far as it goes, and, standing by itself, locates the grant.

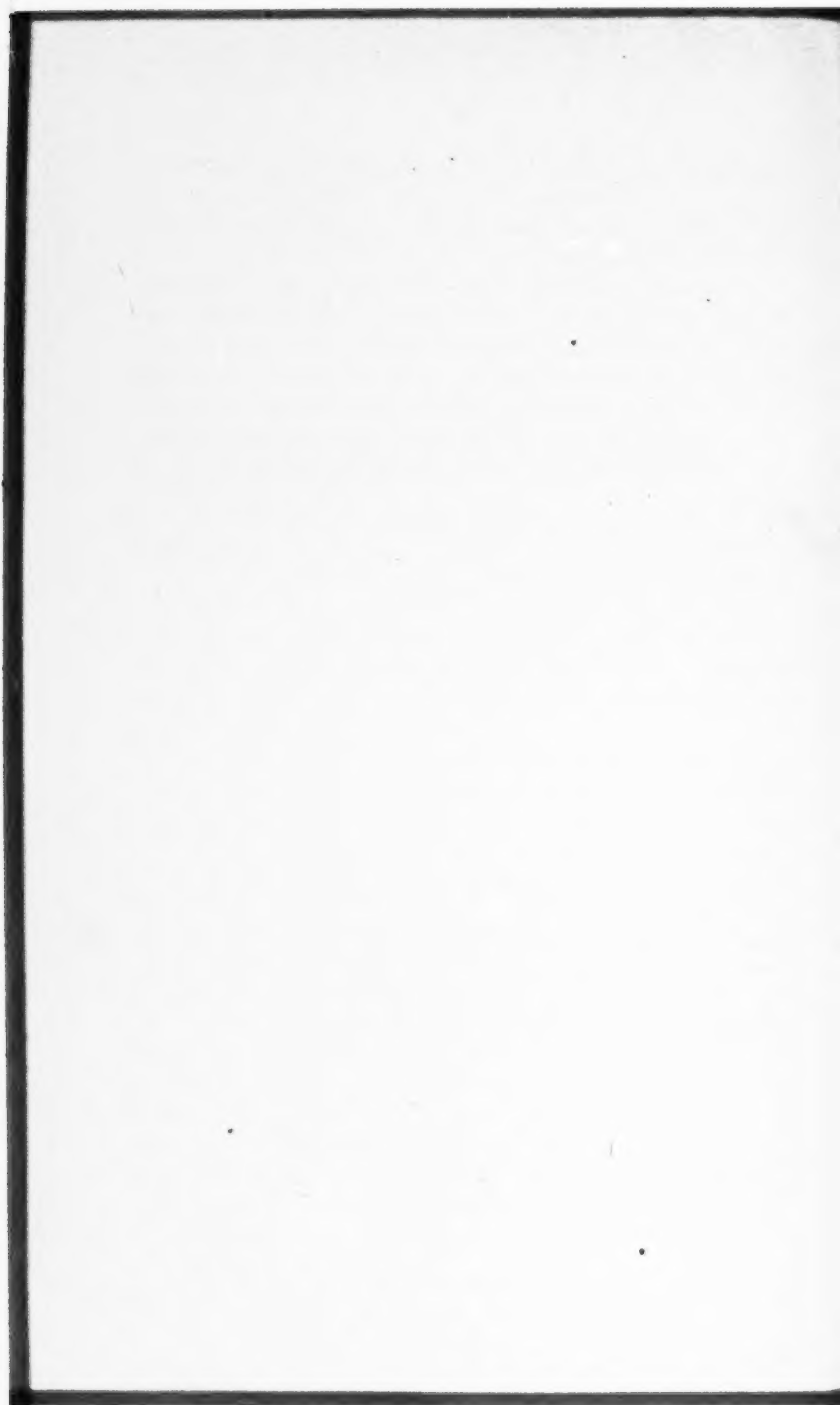
A competent and honest surveyor can take this expediente and have Flipper to point out what he saw of these monuments and natural objects, and he can completely measure and locate every line of it upon the ground. Flipper did not wish to do this and turned away when he saw that the sienega and the hot spring and the bald hill and the monuments proved the survey historically, and then he began to find flaws in the courses and in the translation of the field-notes of the alcalde. Roskrugs found no difficulty in locating the survey as it was originally made and in measuring it by triangulation. It is much larger in area than eight sitios, but the monuments and natural objects described in the calls are immutable in the declaration and

proof that this is the land adjudicated as being sold and conveyed to Ignacio and Eulalia Elias. Mexico would not, nor could not, have rightfully claimed the surrender of a foot of it as an over-grant.

Away from the little valley the country was a desert. Within it, Indians and outlaws have marauded upon the Eliases and their successors, and the cost of human life expended in its protection has earned it twice over had it been a conquest won by arms instead of a purchase at public sale paid for under the guaranty of two great powers that the owners should enjoy it in peace and security.

JOHN T. MORGAN,

Attorney for Appellant.



Supreme Court of the United States

OCTOBER TERM, 1907

No. 30

ROBERT PERRIN, APPELLANT,

**THE UNITED STATES, THE CITIZEN LAND AND
CATTLE COMPANY, ET AL.**

**ADDITIONAL ARGUMENT OF JOHN T. MORGAN,
ATTORNEY FOR APPELLANT.**

JENN & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE
Supreme Court of the United States.
OCTOBER TERM, 1897.

No. _____

ROBERT PERRIN, APPELLANT,

vs.

THE UNITED STATES, THE CRITIDEN LAND AND
CATTLE COMPANY, ET AL.

**ADDITIONAL ARGUMENT OF JOHN T. MORGAN,
ATTORNEY FOR APPELLANT.**

1. As to the right of the appellant to hold this land against the United States, and as to the certainty and definiteness of the location of the tract, the real question is whether "*the place named San Ignacio del Babocomori, situate in the jurisdiction of the presidio of Santa Cruz,*" "*adjoining the rancho of San Pedro,*" was segregated from the public domain in Mexico, and whether this was done by proceedings for the benefit of Mexican citizens instituted and completed "*according to the laws and ordinances of the government*" of Sonora before the 25th day of September, 1853.

2. If the land was, in fact, segregated from the Mexican public domain and had in equity and justice passed into private ownership, but the title was not "complete and perfect at the date of the acquisition of the territory by the United States," this state of facts gives the United States courts jurisdiction; and if the right acquired was such as "the claimant would have a lawful right to make perfect and complete had the territory not been acquired by the United States," then if "the United States are bound, upon principles of public law or by the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date complete and perfect," the title has not passed to the United States *under the treaty* except for the purpose of confirmation to the holder of the equitable title.

The powers conferred upon the courts by the statute of March 3, 1891, are very broad, but they would be useless for the purposes of justice and to execute the agreement between the two Republics as expressed in their treaties, *if they had been confined to the adjudication of the question whether a perfect legal title had actually passed from Mexico for lands granted or sold to her citizens whom she was about to expatriate* under painful circumstances.

3. The right to demand a "release" of the claim of the United States was made, by the treaties and the statute, to depend upon the right to have the claim of a Mexican made perfect and complete under Mexican "laws and ordinances" (if it was not already complete) had the territory not been acquired by the United States.

4. The state of progress that had been made towards obtaining a "title lawfully regular and complete" from Mexico, which would give our courts jurisdiction *to complete the title*, is not defined in these treaties or in our act of Congress; but the nature and scope of the powers conferred on the courts in section 7 of the act of March 3, 1891, clearly indicate the intention of Congress to confer upon them plenary equity jurisdiction in respect of all imperfect titles lawfully and justly derived from Mexico or Sonora in favor of *bona fide claimants*. Section 7 of that law is as follows:

"Sec. 7. That all proceedings subsequent to the filing of said petition shall be conducted as near as may be according to the practice of the courts of equity of the United States, except that the answer of the attorney of the United States shall not be required to be verified by his oath, and except that, as far as practicable, testimony shall be taken in court or before one of the justices thereof. The said court shall have full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico at the city Guadalupe Hidalgo, on the second day of February, in the year of our Lord eighteen hundred and forty-eight, or the treaty concluded between the same powers at the City of Mexico, on the thirtieth day of December, in the year of our Lord eighteen hundred and fifty-three, and the laws and ordinances of the government from which it is alleged to have been derived, and all other questions properly arising between the claimants or other parties in the case and the United States, which decree shall in all cases refer to the treaty, law, or ordinance under which such claim is confirmed or rejected; and in confirming any such claim, in

whole or in part, the court shall in its decree specify plainly the location, boundaries, and area of the land the claim to which is so confirmed."

That section of the act would be superfluous if it did not apply to what we term perfect equities or equitable titles to lands, and if in connection with paragraph 1 of section 13 it did not include the power "to make perfect" grants of land that were not "complete and perfect at the date of the acquisition of the territory by the United States."

5. These powers thus conferred upon the court expressly include the jurisdiction and "full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title *and the boundaries* of the grant or claim presented for adjudication, according to the laws of nations, and the stipulations of the treaties between the two countries.

Under these provisions of law the courts, whose "proceedings * * * shall be conducted as near as may be according to the practice of the courts of equity of the United States," could not hesitate to *reform a deed or a record or a survey*, if need be, to make it conform to the truth, if that was necessary for the purposes of justice; nor would they hesitate to direct a survey, to amend or correct one, which was defective through the unskillfulness of a government surveyor, to the injury of a *bona fide* purchaser of lands at a sale made by the government. And in all such matters we

are bound to consider the state of the law and practice in Mexico in the disposal of lands and in the location and survey of lands in vast tracts of country inhabited by wild and savage bands of Indians.

6. Our treaties with Mexico provide for the security and the allowance by our tribunals of all vested rights of property held by claimants under Mexican laws, ordinances, and usages, whether complete or incomplete as to the muniments of title, including surveys, proceedings of land tribunals, and conveyances, and this without respect to what we call a perfect legal title or a perfect equitable title.

Nothing less than this full protection of the people, whose allegiance was being changed by compulsion, would satisfy the laws of nations, the stipulations of the treaties, the laws and ordinances of the government from which they were alienated, and the conscience of the American people.

This full measure of protection is to be guaranteed by the decree of our highest court, through a specific grant of jurisdiction, under these several heads, and it is further empowered to pass upon "*all other questions properly arising between the claimants or other parties in the case and the United States.*" To prevent a possible failure of justice, as it is discerned in the more perfect light of equity jurisprudence, the Supreme Court of the United States is given full power to allow amendments of the proceedings in the Court and extraordinary powers to obtain further evidence bearing upon any question as to which doubts may arise.

Congress has taken a broad and liberal view of the whole subject and has so provided that the Government shall acquire nothing under these treaties that in good faith belonged

to Mexican citizens when they became, by the act of the two governments, the unwilling inhabitants of a Government that most of them were embittered against.

7. No claim of the United States in conflict with an honest claim of a Mexican citizen based on a purchase and payment for property from Mexico or any State of that Republic and capable of a reasonable enforcement should be enforced by the Supreme Court of the United States when its "*release*" is the full measure of the decree that is proper to be rendered in the case.

8. This Court is not required to adjudicate that the title of the claimant is perfect as to all the world, but that it should be *released* from the power of the Government of the United States to dispose of the land. Although the claimant's title may be imperfect in form, yet if it is just, equitable, and capable of being made perfect in substance it does not pass to the United States by the treaty.

9. If the title to "the place named Babocomori" is lost to the vendee, it is clearly the fault of the Mexican authorities through whom that government has received a full price for the property, and, Mexico having sold it afterwards to the United States, neither government is liable to refund the purchase-money and interest to the honest purchaser. The loss falls on him alone. We cannot afford to take this land at that cost to the original purchasers, to which has been added at least \$30,000 in taxes and in subsequent sales to our own people who are innocent purchasers. This land has cost our citizens who claim it more than the price per

acre that the United States paid for the 45,535 square miles bought from Mexico under the Gadsden purchase.

10. This territory was purchased from Mexico for the sake of dominion. It was not a land speculation. It was not acquired by conquest, and the reservations made in favor of Mexicans are entitled to the same protection by estoppel and by the laws of equity and justice as if the parties to the sale and purchase were private persons.

11. In acquiring a title to this territory the United States did not acquire the sort of sovereign power of Mexico through which that government could arbitrarily refuse to complete a title that was just but incomplete. On the contrary, Congress requires it to be completed if it was lawfully derived from Mexico under an express treaty obligation and as an act of justice to be determined by decrees of our courts and to be by them executed.

12. Mexico, the vendor of the United States, did not sell any land that had been previously sold to a Mexican citizen for valuable consideration and by lawful authority. When the ownership of the land became a vested right, whether or not the muniments of title were complete or perfect, *that right was not intended to be destroyed by the treaty*, and all the laws of estoppel are made operative by the treaty in favor of the innocent purchaser to the same effect as if the two governments were private persons dealing with reference to the land.

13. Article VIII of the treaty of 1848 is made a part of the treaty of 1853 in the sixth article. It applies alike to

Mexicans who were then "established in territories previously belonging to Mexico" and "to Mexicans not established there" as actual inhabitants. As to both classes, that article provides the same protection for all rights of property. As to non-resident Mexicans, it provides that "in said territories property of every kind now belonging to Mexicans not established there *shall be inviolably respected,*" and as to all Mexicans the right of "retaining the property which they *possess* in the said territories" is placed under the inviolable guaranty above quoted.

14. Article IX of the treaty of 1848 was intended to express the same meaning that was expressed in article X, (which was stricken out), in the same terms that were used, substantially, in the French treaty relating to Louisiana, concluded April 30, 1803 (art. III).

In that article also, which is made a part of the Gadsden treaty, this express guaranty is inserted, that Mexicans "shall be maintained and protected in the free enjoyment of their liberty and property," &c. In the second protocol of that treaty it is affirmed that—

"The American Government by suppressing the Xth article of the treaty of Guadalupe did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article of the treaty, preserve *the legal value which they may possess*, and the grantees may cause their *legitimate (titles) (?)* to be acknowledged before the American tribunals."

Article V of the treaty of 1853 expressly applies, to the Gadsden purchase, the articles numbered 8, 9, 16, and 17 of the treaty of Guadalupe-Hidalgo, and secures to Mexicans

"all rights of persons and property, both civil and ecclesiastical, * * * as fully and as effectually as if the said articles were herein again recited and set forth."

15. Under Mexican and Spanish laws the public domain *in the territories* was disposed of by grants, either for purposes of settlement or colonization or as a mark of public favor, while *in the States* the public lands were treated as "rentes"—sources of revenue—and were sold for money.

16. The territory acquired under the treaty of 1848 did not include any part of a State of the Mexican Republic, but the Gadsden purchase cut deep into the territorial limits of the State of Sonora.

This state of facts was provided for in the first subdivision of section 13 of the act of March 3, 1891. That provision gives the courts jurisdiction to adjudicate claims to lands the titles to which are "derived from the government of Spain or México or from any of the States of the Republic of Mexico having lawful authority to make grants of land," which means the power to dispose of lands.

This law of Congress executes the purpose of articles VIII and IX and of the second protocol of the treaty of 1848, and is obligatory on the courts as a legislative construction of those engagements of the Government and of the "rights of persons and property" included in "*legitimate titles derived from the States of the Republic of Mexico* having lawful authority to make grants of land."

Without this express statutory authority the courts would have to work out their power to confirm or annul titles derived from those States by an embarrassing resort to construction, if it really existed.

17. This statute covers sales of lands made by the States of Mexico. Conceding to the broader generic word "grants" its fullest effect, as it is used in the treaties, it would mean grants made by the "United Mexican States," as in the treaty of 1848, or by the "Republic of Mexico," as in the treaty of 1853. If this was the only source of the titles under which Mexicans could claim lands, such a construction would, as is claimed by the Government in this case, sweep away every land title in Sonora that had not been granted by the Republic, or by Spain.

This was the purpose of Santa Aña's terrible ukase, but our Congress annulled it or repudiated it in the act of March 3, 1891.

18. Sonora could, as proprietor, make grants of land or sales of land for a consideration in money, and it is a sale of land and not a grant of land that the court is now considering.

This state of the case is important to be considered with reference to article VI of the treaty of 1853.

That article is peculiar, in that it fixes a date prior to the conclusion of the treaty—the 25th of September—when the minister of the United States "proposed to the government of Mexico to terminate the question of boundary," as the date that should terminate the power of the Republic of Mexico to make grants of land.

The good faith of the Mexican government was seriously questioned by our insistence on this provision in the treaty.

This abundant caution may have been inspired by a feeling of distrust in the good faith of Santa Aña, who was then President, or, more likely, by the fact that the United

States had experienced great embarrassment in Florida in respect of grants made during the interval between the conclusion of the treaty of 1819 and its ratification by the King of Spain, and in Louisiana from like questions. (*U. S. vs. Arredondo*, 6 Peters, 706; *Foster vs. Neilson*, 2 Peters, 306.)

The grants of land mentioned in article VI of the treaty of 1853 were only such as *the Republic* had the exclusive power to make, and the provision that grants made before the 25th of September, 1853, should "not be respected or considered as *obligatory* which have not been located and recorded in the archives of Mexico" must relate to grants *made by the Republic and recorded in its archives.*

19. If Sonora had the right to grant or sell lands to Mexicans it must have had the right to locate the lands and to keep the record of the transaction in its archives. These are not the archives of the Republic of Mexico. Congress declares, in accordance with the treaties, that such grants were valid if lawfully derived from the States, and does not add that they are void unless they are recorded in the archives of Mexico. In cases free from fraud that rest on a title lawfully derived from Sonora, Congress in the act of 1891 empowers the court to confirm the grant without its having been recorded in the archives of Mexico.

20. The jurisdiction of the court attaches in this case, because Congress, in giving legislative construction and effect to these treaties, has provided that "legitimate titles" to land derived from the States of Mexico may be subjects of adjudication.

If location and registration are also requisites of a title

derived from Sonora this requirement is fulfilled by the fact that the original "matrix" of the "titulo" is found in the archives at Hermosillo.

As to this fact there is no dispute. The location of this land is established by a series of facts, partly of record and partly established by reference to natural objects, all agreeing in the specific designation of its actual geographical location on the face of the earth.

21. The "denunciation" of this tract of land was made in 1827, seventy years ago, as "the lands named San Ignacio del Babocomori, *situated* in the jurisdiction of the presidio of Santa Cruz," and the denouncement, being in writing, "was admitted, according to the law, on the 1st of July, 1827, and the writing of denouncement and the other proceedings in relation thereto are as follows."

22. The written denouncement and all the other proceedings were filed and made a record in the archives of Sonora as the "matrix" of the "titulo."

Then follows, in the proceedings, the petition of Ignacio Elias and his sister, Eulalia Elias, in the words following:

"To the Treasurer General:

"We, Ignacio Elias and Eulalia Elias, present ourselves before your honor, respectfully representing that, needing a tract of land for our stock, we denounce, *in company with Don Rafael Elias, Captain Ignacio Elias, and Don Nepomuceno Feliz, the vacant tract of land adjoining the rancho of San Pedro, situated in the jurisdiction of the presidio of Santa Cruz, as far as the place of Tres Alamos, obligating ourselves to pay to the nation the corresponding tax, with all other matters that justice may require, until the title and confirmation thereof shall be obtained; wherefore, your honor will be pleased to consider the vacant tract referred to, petitioned*

for; wherefore, we pray your honor to be pleased to order as we have prayed for, in which we will receive favor.

"ARIZPE, March 12th, 1827.

"In the absence of and at the request of—

"DON IGNACIO ELIAS.

"JOAQUIN ELIAS.

"EULALIA ELIAS."

23. In this petition no claim was made for any specific number of sitios of land nor lands of any particular shape or dimensions. What was claimed was "*a tract of land for our stock,*" and it was described generally as "the vacant tract of land adjoining the rancho of San Pedro, situated in the jurisdiction of the presidio of Santa Cruz as far as the place Tres Almos." It was made on behalf of three persons, so that *the general tract* had to be apportioned. The law limited to each person four sitios, *unless they should show that they needed more land for pasturage.*

24. On the same day, July 1, 1827, the petition and denouncement were referred to Nicolas Maria Cajola, the treasurer general of Sonora, who "thus decreed and signed" "that the alcalde of Santa Cruz will proceed in the matter under the authority which is conferred on him, without prejudice to a third party who may have a better right, first citing the colindantes (neighboring proprietors) to *the measurement, valuation, and publication for thirty days consecutively of the lands referred to in the denouncement.*"

25. The alcalde was Alejandro Franco, constitutional alcalde of the presidio of Santa Cruz, who had for his assistant Ramon Romero, acting by special authority in the absence of a notary public, according to law. The name of

the alcalde was signed by Ramon Romero to the papers, evidently because the alcalde could not write his name, and it was attested with his mark.

26. He went to San Pedro on the 5th of October, 1828, "for the purpose of *measuring* the lands petitioned for by the petitioners."

The land had been located in the petition by a public geographical name and by the denouncement in writing, "which was admitted according to law" by the treasurer general of Sonora as "the lands *named* San Ignacio del Babocomori, in the jurisdiction of the presidio of Santa Cruz." In the caption to the "titulo" it is called "the place named San Ignacio del Babocomori," an admission of record that Mexico or Sonora could not refuse to give effect to.

27. This "place" was as distinctly located geographically and by common recognition and tradition as it was in these records, and they were all in perfect correspondence.

28. Places are very commonly the subjects of judicial knowledge, according to their recognized names, and when they are named the proof of their existence or location is seldom made otherwise. They are described merely by name and are identified by the common knowledge of the people in or near them—such as "Lafayette square" or "Scott circle," or "Mount Vernon place," in the District of Columbia. A conveyance or a condemnation of such a place would be sustained as being sufficiently definite and accurate by the name to which common consent would assign lines of boundary.

"The place called Ignacio del Babocomori," "in the jurisdiction of the presidio of Santa Cruz," and "adjoining the Rancho San Pedro," in the State of Sonora, is described, first, by the location of a State; second, of a civil jurisdiction; third, of an established rancho which it joined; fourth, by a name that no other place in Mexico has ever had. No one would ever fail to find the location of that place or be at a loss to understand why it is called "a place" and is given a distinctive name. In the arid mountains, it is a narrow plain that is nearly surrounded by high hills, in which there is good grazing for horses and horned cattle. The indispensable part of the place is that from which it takes its name—Babocomori creek—which rises near the foot of the Santa Rita mountains and runs east in a line that is remarkably straight to San Pedro river, which it enters nearly at right angles.

As a place for grazing horses and horned cattle in large herds and on a remote and dangerous frontier, no one in describing it as to its location or uses would have ever thought of saying that it contains eight sitios of land. That would confuse the description instead of making it plainer.

It was denounced as a place as land for the raising of "our stock." The denunciation was admitted "according to the law" for that purpose, and "the law of 20th May, 1825, No. 30," is stated as the legal basis of the entire proceeding. That is a special statute *that relates solely to the disposal of lands for the encouragement of stock-growing*. It has no reference to colonization, which requires residence on the lands. The colonization laws relate to actual, permanent settlements, to be supported chiefly by agriculture, and the entire law is different in every way from the decree

No. 30, of the 20th of May, 1825. This law was a revision of the old law by a decree of August 18, 1824, more than a year before provision was made *for selling lands* to stock-growers.

29. For all the purposes of certainty in the location of "the place called Ignacio del Babocomori," the description so given, admitted, and adopted as the description of the land claimed by the petitioners, in the decree of the treasurer general of Sonora, was sufficient to support *a grant* for a stock farm.

30. But this was not a grant, in the meaning of the Mexican law, for the statute cited in the proceedings made it a sale for money, and it was attended with mutual covenants of the vendor and vendee.

31. To complete the sale, according to law, an upset price must be fixed on the land by valuation, and to prevent the monopoly of land, or more especially of water, a survey was made necessary by the law.

Four sitios was the limit of the sale to a "new breeder" under section 21; but "to those who from the abundance of their stock need more, although old breeders, *the treasurer general shall grant so much more as they need*" (Reynolds, 129, 130). Nicholas Maria Gajiola was treasurer general of Sonora, and acting under these ample powers he directed, adjudged, and concluded and confirmed the survey and sale of the lands.

After admitting the denunciation according to the law, and after examining the writing of denouncement and the

petition based upon it, he decreed that "the Alcalde of Santa Cruz will proceed in the matter under the authority which is conferred upon him, without prejudice to a third party who may have a better right, * * * to the measurement, valuation, and publication for thirty days, consecutively, of the lands referred to in the denouncement, subject to the sovereign decree of the honorable constituent congress of the State, number 30, of the 20th May, 1825, and to the regulations accompanying the same."

This decree did not provide for a *location of a grant*, but for the measurement of the land covered by the "place" or tract to be offered at public biddings for sale, and for its valuation or as much more as a higher bidder might give for it.

It was plainly evident from the language of this decree, which expressly referred to the written denouncement, that it was "*the place*" that the three Eliases (two of them jointly) desired to purchase, and not 8 or 12 sitios to be carved out of the place; and such was, also, the clear purpose of the treasurer general, as it more distinctly appears in his further decree upon the survey and valuation of the tract set apart to Ignacio and Eulalia Elias.

32. The word "sitio" in a survey of agricultural lands means a league or 4,338,464 acres, or, in a sheep ranch, 1,928,133 acres. This is a wide discrepancy, but it accords with the fact that the generic word "sitio" means a *location* and is not an admeasurement, except as it is defined by law in its particular application to special uses to which the land is to be devoted. A comparison of sections 17, 24, 27, 30, and 31 of the act makes this very clear.

The power given the treasurer general by section 20 of this law to *grant* to "old breeders" only "so much more as they need" is not confined to any measurement or limited to any number of sitios, nor is the price fixed. That policy would restrict stock-breeding instead of giving it encouragement. It is manifest that in the wild frontiers Sonora *was not selling lands by the acre to get revenue, but by the location to supply food for the people and to repress the savage tribes of Indians roving over that country.* It was a wise public policy that gave to the Treasurer General under cautious examinations the full discretion to make additional *grants* of land to *old breeders* when they had bought and paid for large tracts of adjacent pasture lands. The apparently loose and careless way in which the lines of this survey were made at the eastern and western boundaries of this place is accounted for by the fact that *the petition did not call for any number of sitios, but for a named place suited to stock-growing, and that Elias was an "old breeder" and would get all the land available for water and grass in the little valley of which Babocomori creek was the real feature of any importance.* Their search was for the natural boundaries of the valley along its water-shed, and natural objects were properly selected to stand for monuments to designate the corners and to demark the boundaries. *The center line had water springs, tanks, and reservoirs for its monuments and the exterior lines had hills, rocks, and trees for their monuments.*

33. When the survey was reported the question of the excess of land over eight sitios *came squarely up for adjudication, and it was then determined by the lawful and plenary*

authority of the Treasurer General of Sonora, on the approval of the proceedings by the Attorney General, Felipe Gil.

The Attorney General then saw "from the surveys" as reported in writing, in the same way that *Flipper afterwards* saw it, that there was a large excess over eight sitios in the tract set apart for Ignacio and Eulalia Elias, whose corners had been established "in the place of San Ignacio del Babocomori," and he thus states the fact: "I find nothing in the proceedings to prevent *adjudication* of the land to the petitioners, unless it be that the quantity exceeds that mentioned in article 21 of the decree of 20th of May, 1825." Here was a statement of the proper law officer that the quantity in the tract *exceeded the ordinary limits of the law*—eight sitios; "but if your honor is satisfied as to the requirements recited in the 22d (article) I am of the opinion that the land be sold to the denouncers, if there should be no one willing to pay a higher price (then) for the same." This opinion was given on December 20, 1828.

"And the Treasurer General having been (being) *satisfied with the foregoing request* of the Attorney General," the land was sold to the denouncers, Ignacio and Eulalia Elias.

Now, if it is assumed that no more than eight sitios were sold and paid for on the 21th of December, 1828, it does not follow that the survey of the tract or place was not confirmed, and that the conveyance by Mendoza "by way of sale" did not also lawfully include a grant within the limits of the survey "*of so much more as they need*" for the use of their cattle and horses, which was demarked by natural objects.

Ut res magis valebat quam pereat, the words "give and *adjudicate* by way of sale," may well apply to the final offering

of the land by the "order" of the Junta des Almonedas, for which *Elias* made no bid, but stood on the offer to pay the valuations, and the word "grant" may apply to the place "named San Ignacio del Babocomori," as it was designated by the survey.

34. When the money was paid for the land the record states that it was paid for at the price "*at which the said tract of land in the place of Babocomori was valued and sold.*"

35. Up to this point in the proceedings neither *Elias* nor any officer concerned in the sale of this land had said anything about eight sitios of land, except that the alcalde surveyor in valuing the land said that six sitios contained running water and two were dry; and the Attorney General said in his report to the Treasurer General that the *expediente* contained *eight sitios of land* for breeding horned cattle and horses, and that *the quantity exceeds* that mentioned in article 21 of the decree of 20th of May, 1825; and he recommended, "requested," the sale of the land to the denouncers, although it was in excess of eight sitios in area, according to the survey, which only fixed the center line by measurement and estimation and the end lines by natural and other monuments at the corners of the tract "in the place of San Ignacio del Babocomori" without actual measurement.

This "request" was granted and confirmed by the Treasurer General, and the Junta des Almonedas acting with him ascertained that no purchaser had come forward to bid more than the valuation. The sale was ordered by this convocation—the Junta—the cry of the auctioneer being, "Let it be

sold! Let it be sold! Let it be sold! Sold to Don Ignacio and Donna Eulalia Elias." "In which terms said act was concluded," etc. The eight sitios made the minimum cost of the land, by that measurement, to any purchaser who would bid more for it, but the grant in excess of that measurement to "the old breeders" would not necessarily have passed by the sale to inexperienced breeders. Evidently this was not a sale by *varas* or *sitios* or any exact measurement, for such a sale, if limited to eight sitios, would exclude the *denouncers* from the benefit petitioned for and granted them by the Treasurer General as "old breeders" of horned cattle and horses of all that "place" as land *needed by them for that purpose*. By selling them eight sitios at the government price, Sonora received all that was demanded by her agents for the entire place called "San Ignacio del Babocomori," that being their own valuation and manifestly a full price, the Eliases not having bid that or any other sum, but having agreed in their petition for the place as follows: "Obligating ourselves to pay to the nation the *corresponding tax* (valuation), with all other matters that justice may require until the title and confirmation thereof shall be obtained." The law required them to pay the costs and expenses of the survey, which were quite considerable, and were not to be returned to them in any event.

36. The "tax" was assessed by the valuation of the land, which was *estimated* at eight sitios, of which six had running water. On every occasion when eight sitios are mentioned in the proceedings it was with reference to the *estimated* value of the *estimated* quantity, and not with reference to the exact measurement of the area of land that

was sold. To prevent monopoly of water, one person could not purchase less than four sitios of land for stock-raising.

37. The quantity of land was the least important factor in the purchase. So little, indeed, was the quantity considered that no other rancho has been established or petitioned for to this time in "the place called San Ignacio del Babocomori." The main purpose of this official survey was to fix the corners of this "place" with reference to natural monuments so as to establish by law a place for a rancho that was known geographically by a certain name, which "place" included a good water supply. It is still "the place San Ignacio del Babocomori," and is so described in all the papers *and by every witness in the case*. The corner monuments and the center monuments are still there, some of them permanent natural objects, and others are artificial.

38. These legal proceedings were closed on the 24th of December, 1828.

Four years later, on 25th of December, 1832, the "titulo" in evidence in this case was made out by the then Treasurer General José Maria Mendoza, *from the record made by his predecessor, Cajola*, to which Mendoza added a "*formal title* in favor of the citizen Ignacio Elias and Donna Eulalia Elias *for their security*."

In April, 1833, Bustamente, the Governor of Sonora, by a decree, No. 762, ordered the then Treasurer General to issue *grant titles* to Ignacio Elias and Eulalia Elias for "San Ignacio del Babocomori, situated in the jurisdiction of the presidio of Santa Cruz," in conformity with the provisions of decree No. 27 of the 11th August, 1831.

If this additional muniment of title was ever issued, it is not in the record, but the order for its issue is sufficient to supplement the previous "formal title" *delivered to them for their security* "and to constitute a confirmatory grant in favor of the Eliases, to whom were sold on the 24th December, 1828, San Ignacio del Babocomori."

This decree and record fully sustains the claim set up in this case by showing conclusively that "San Ignacio del Babocomori" *had passed into private ownership* in good faith and by such legal acts and formalities as bound Sonora to make the title good in law if it was not complete in form. This decree was one of divestiture of title and its investiture in purchasers who were innocent, if any further act or declaration was necessary.

39. No act of these purchasers and no omission or neglect of theirs can be cited from the evidence to show laches or covin on their part. They are in court with clean hands petitioning for just rights.

40. Immediately upon the completion of this purchase the Eliases proceeded to establish their rancho at the place called "Ignacio del Babocomori." They built houses there and had a *major domo*, with his family, to reside on the land, with other herdsmen in charge of large herds of horses and cattle, and that possession was maintained by them with strong hand against hostile Indians and by their successors against the scarcely less savage intruders; and this compliance with their covenants has cost the expenditure of much labor and money and human life. Not for a day has this rancho ever been abandoned by its owners. When

Congress gave to the trespassing squatters on this rancho the sanction of a legalized right of occupancy the contention for title and possession necessarily became a question proper for the courts. Not content with this form of security and shelter against honest owners, these persons have constantly resorted to violence to protect their unlawful trespass and have killed those who went on the lands to examine or survey them.

This fact is established in all the depositions that relate to the subject. Even Flipper, whose clientage is among the squatters and makes himself conspicuously active in his efforts to destroy the rights of honest purchasers in his pretended zeal for the United States, was afraid to attempt an actual survey of the land in question. He preferred to rest his opinions upon a blackboard demonstration of the scraps of engineering information he had picked up in a partial military education at West Point and his knowledge of the Spanish language obtained in his association with the mixed races of white men, Mexicans, negroes, and Indians that inhabit this wild frontier; but even Mr. Flipper found the landmarks and piles of stones collected for monuments of the old Mexican survey made seventy years before he was ever on that soil.

He found it impossible to read intelligently the field-notes of the unskilled alcalde, but he could still trace the center line of the survey as the alcalde had established it and as every one else has recognized it from that day to this, and he found nearly every pile of stones and all but one of the natural monuments described in the field-notes of the alcalde.

Flipper's testimony, without being so intended, gives very strong support to the survey of the alcalde.

Mexico did not intend to convey to the United States as against the citizens of Sonora, with whom she was about to part with mutual and deep regret, any right to lands held by them in good faith; and this is the spirit of the treaty for the Gadsden purchase. This is the true intent of that treaty.

At the date of that treaty the Republic of Mexico had no right in law or equity to the "Place San Ignacio del Babocomori," and that government had no intention and no right to drive the owners from their lands and to resume the title or the possession thereof.

If Mexico had no such purpose or right as against her people in Sonora, the treaties with the United States prohibited us from setting up a claim as a sovereign power that Mexico had no right to assert.

Under the treaties and under the act of 1891 the United States have consented to be sued in our courts as to any of these alleged rights of the Mexicans, and have empowered those courts with full equity jurisdiction in reference to all such matters. Under that authority the Supreme Court and the Land Court can make any decree that justice may require to protect the interests of all concerned.

The courts have express authority to cause surveys to be made and to execute a sale or grant of land by Mexico, in whole or in part, according to the very right of the matter. If the survey of this land by the alcalde is not exact—if he has made a mistake as to the quantity of land included in the metes and bounds designated by him or in any form of proceeding—still enough is left of record that is undisputed to enable a court of equity to do justice to innocent pur-

chasers who have done all they could to comply with the laws in their payment for the land, in protecting it and the neighboring country from the depredations of hostile Indians in order to promote a necessary public policy, and in maintaining a force there that has protected the lives and food of the people.

Continued possession without any thought of abandonment for sixty years, and the payment of large sums for taxes and for permanent improvements, without objection from Sonora or Mexico or the United States, or any intimation of an adverse claim from any source, establishes a prescriptive right to this land that is coextensive with the area so occupied and claimed that a subsequent purchaser must respect, whether the purchaser is a government or only a private person. The United States cannot rely on the maxim "*nullus tempus occurrit regi*," because the treaty concedes to Mexican claimants the right to set up title by prescription against the Government.

JOHN T. MORGAN,
Attorney for Appellant.

Sup. Ct. Rep. Vol. 100, p. 30

Term 1897

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 30.

ROBERT PERRIN, APPELLANT.

THE UNITED STATES, THE CITIZEN LAND AND
CATTLE COMPANY ET AL.

ADDITIONAL ARGUMENT OF JOHN T. MORGAN,
ATTORNEY FOR APPELLANT.

JOHN T. MORGAN, PARTNER, WASHINGTON, D. C.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

No.

ROBERT PERRIN, APPELLANT,

vs.

THE UNITED STATES, THE CRITIDEN LAND AND
CATTLE COMPANY, ET AL.

**ADDITIONAL ARGUMENT OF JOHN T. MORGAN,
ATTORNEY FOR APPELLANT.**

1. As to the right of the appellant to hold this land against the United States, and as to the certainty and definiteness of the location of the tract, the real question is whether "*the place named San Ignacio del Babocomori, situate in the jurisdiction of the presidio of Santa Cruz,*" "*adjoining the rancho of San Pedro,*" was segregated from the public domain in Mexico, and whether this was done by proceedings for the benefit of Mexican citizens instituted and completed "*according to the laws and ordinances of the government*" of Sonora before the 25th day of September, 1853.

2. If the land was, in fact, segregated from the Mexican public domain and had in equity and justice passed into private ownership, but the title was not "complete and perfect at the date of the acquisition of the territory by the United States," this state of facts gives the United States courts jurisdiction; and if the right acquired was such as "the claimant would have a lawful right to make perfect and complete had the territory not been acquired by the United States," then if "the United States are bound, upon principles of public law or by the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date complete and perfect," the title has not passed to the United States *under the treaty* except for the purpose of confirmation to the holder of the equitable title.

The powers conferred upon the courts by the statute of March 3, 1891, are very broad, but they would be useless for the purposes of justice and to execute the agreement between the two Republics as expressed in their treaties, *if they had been confined to the adjudication of the question whether a perfect legal title had actually passed from Mexico for lands granted or sold to her citizens whom she was about to expatriate under painful circumstances.*

3. The right to demand a "release" of the claim of the United States was made, by the treaties and the statute, to depend upon the right to have the claim of a Mexican made perfect and complete under Mexican "laws and ordinances" (if it was not already complete) had the territory not been acquired by the United States.

4. The state of progress that had been made towards obtaining a "title lawfully regular and complete" from Mexico, which would give our courts jurisdiction to *complete the title*, is not defined in these treaties or in our act of Congress; but the nature and scope of the powers conferred on the courts in section 7 of the act of March 3, 1891, clearly indicate the intention of Congress to confer upon them plenary equity jurisdiction in respect of all imperfect titles lawfully and justly derived from Mexico or Sonora in favor of *bona fide claimants*. Section 7 of that law is as follows:

"SEC. 7. That all proceedings subsequent to the filing of said petition shall be conducted as near as may be according to the practice of the courts of equity of the United States, except that the answer of the attorney of the United States shall not be required to be verified by his oath, and except that, as far as practicable, testimony shall be taken in court or before one of the justices thereof. The said court shall have full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico at the city Guadalupe Hidalgo, on the second day of February, in the year of our Lord eighteen hundred and forty-eight, or the treaty concluded between the same powers at the City of Mexico, on the thirtieth day of December, in the year of our Lord eighteen hundred and fifty-three, and the laws and ordinances of the government from which it is alleged to have been derived, and all other questions properly arising between the claimants or other parties in the case and the United States, which decree shall in all cases refer to the treaty, law, or ordinance under which such claim is confirmed or rejected; and in confirming any such claim, in

whole or in part, the court shall in its decree specify plainly the location, boundaries, and area of the land the claim to which is so confirmed."

That section of the act would be superfluous if it did not apply to what we term perfect equities or equitable titles to lands, and if in connection with paragraph 1 of section 13 it did not include the power "to make perfect" grants of land that were not "complete and perfect at the date of the acquisition of the territory by the United States."

5. These powers thus conferred upon the court expressly include the jurisdiction and "full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title *and the boundaries* of the grant *or claim* presented for adjudication, according to the laws of nations, and the stipulations of the treaties between the two countries.

Under these provisions of law the courts, whose "proceedings * * * shall be conducted as near as may be according to the practice of the courts of equity of the United States," could not hesitate *to reform a deed or a record or a survey*, if need be, to make it conform to the truth, if that was necessary for the purposes of justice; nor would they hesitate to direct a survey, to amend or correct one, which was defective through the unskillfulness of a government surveyor, to the injury of a *bona fide* purchaser of lands at a sale made by the government. And in all such matters we

are bound to consider the state of the law and practice in Mexico in the disposal of lands and in the location and survey of lands in vast tracts of country inhabited by wild and savage bands of Indians.

6. Our treaties with Mexico provide for the security and the allowance by our tribunals of all vested rights of property held by claimants under Mexican laws, ordinances, and usages, whether complete or incomplete as to the muniments of title, including surveys, proceedings of land tribunals, and conveyances, and this without respect to what we call a perfect legal title or a perfect equitable title.

Nothing less than this full protection of the people, whose allegiance was being changed by compulsion, would satisfy the laws of nations, the stipulations of the treaties, the laws and ordinances of the government from which they were alienated, and the conscience of the American people.

This full measure of protection is to be guaranteed by the decree of our highest court, through a specific grant of jurisdiction, under these several heads, and it is further empowered to pass upon "*all other questions properly arising between the claimants or other parties in the case and the United States.*" To prevent a possible failure of justice, as it is discerned in the more perfect light of equity jurisprudence, the Supreme Court of the United States is given full power to allow amendments of the proceedings in the Court and extraordinary powers to obtain further evidence bearing upon any question as to which doubts may arise.

Congress has taken a broad and liberal view of the whole subject and has so provided that the Government shall acquire nothing under these treaties that in good faith belonged

to Mexican citizens when they became, by the act of the two governments, the unwilling inhabitants of a Government that most of them were embittered against.

7. No claim of the United States in conflict with an honest claim of a Mexican citizen based on a purchase and payment for property from Mexico or any State of that Republic and capable of a reasonable enforcement should be enforced by the Supreme Court of the United States when its "*release*" is the full measure of the decree that is proper to be rendered in the case.

8. This Court is not required to adjudicate that the title of the claimant is perfect as to all the world, but that it should be *released* from the power of the Government of the United States to dispose of the land. Although the claimant's title may be imperfect in form, yet if it is just, equitable, and capable of being made perfect in substance it does not pass to the United States by the treaty.

9. If the title to "the place named Babocomori" is lost to the vendee, it is clearly the fault of the Mexican authorities through whom that government has received a full price for the property, and, Mexico having sold it afterwards to the United States, neither government is liable to refund the purchase-money and interest to the honest purchaser. The loss falls on him alone. We cannot afford to take this land at that cost to the original purchasers, to which has been added at least \$30,000 in taxes and in subsequent sales to our own people who are innocent purchasers. This land has cost our citizens who claim it more than the price per

acre that the United States paid for the 45,535 square miles bought from Mexico under the Gadsden purchase.

10. This territory was purchased from Mexico for the sake of dominion. It was not a land speculation. It was not acquired by conquest, and the reservations made in favor of Mexicans are entitled to the same protection by estoppel and by the laws of equity and justice as if the parties to the sale and purchase were private persons.

11. In acquiring a title to this territory the United States did not acquire the sort of sovereign power of Mexico through which that government could arbitrarily refuse to complete a title that was just but incomplete. On the contrary, Congress requires it to be completed if it was lawfully derived from Mexico under an express treaty obligation and as an act of justice to be determined by decrees of our courts and to be by them executed.

12. Mexico, the vendor of the United States, did not sell any land that had been previously sold to a Mexican citizen for valuable consideration and by lawful authority. When the ownership of the land became a vested right, whether or not the muniments of title were complete or perfect, *that right was not intended to be destroyed by the treaty*, and all the laws of estoppel are made operative by the treaty in favor of the innocent purchaser to the same effect as if the two governments were private persons dealing with reference to the land.

13. Article VIII of the treaty of 1848 is made a part of the treaty of 1853 in the sixth article. It applies alike to

Mexicans who were then "established in territories previously belonging to Mexico" and "to Mexicans not established there" as actual inhabitants. As to both classes, that article provides the same protection for all rights of property. As to non-resident Mexicans, it provides that "in said territories property of every kind now belonging to Mexicans not established there *shall be inviolably respected*," and as to all Mexicans the right of "retaining the property which they *possess* in the said territories" is placed under the inviolable guaranty above quoted.

14. Article IX of the treaty of 1848 was intended to express the same meaning that was expressed in article X, (which was stricken out), in the same terms that were used, substantially, in the French treaty relating to Louisiana, concluded April 30, 1803 (art. III).

In that article also, which is made a part of the Gadsden treaty, this express guaranty is inserted, that Mexicans "shall be maintained and protected in the free enjoyment of their liberty and property," &c. In the second protocol of that treaty it is affirmed that—

"The American Government by suppressing the Xth article of the treaty of Guadalupe did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article of the treaty, preserve *the legal value which they may possess*, and the grantees may cause their *legitimate (titles) (?)* to be acknowledged before the American tribunals."

Article V of the treaty of 1853 expressly applies, to the Gadsden purchase, the articles numbered 8, 9, 16, and 17 of the treaty of Guadalupe-Hidalgo, and secures to Mexicans

*"all rights of persons and property, both civil and ecclesiastical, * * * as fully and as effectually as if the said articles were herein again recited and set forth."*

15. Under Mexican and Spanish laws the public domain *in the territories* was disposed of by grants, either for purposes of settlement or colonization or as a mark of public favor, while *in the States* the public lands were treated as "rentes"—sources of revenue—and were sold for money.

16. The territory acquired under the treaty of 1848 did not include any part of a State of the Mexican Republic, but the Gadsden purchase cut deep into the territorial limits of the State of Sonora.

This state of facts was provided for in the first subdivision of section 13 of the act of March 3, 1891. That provision gives the courts jurisdiction to adjudicate claims to lands the titles to which are "derived from the government of Spain or Mexico or from any of the States of the Republic of Mexico having lawful authority to make grants of land," which means the power to dispose of lands.

This law of Congress executes the purpose of articles VIII and IX and of the second protocol of the treaty of 1848, and is obligatory on the courts as a legislative construction of those engagements of the Government and of the "rights of persons and property" included in "*legitimate titles derived from the States of the Republic of Mexico* having lawful authority to make grants of land."

Without this express statutory authority the courts would have to work out their power to confirm or annul titles derived from those States by an embarrassing resort to construction, if it really existed.

17. This statute covers sales of lands made by the States of Mexico. Conceding to the broader generic word "grants" its fullest effect, as it is used in the treaties, it would mean grants made by the "United Mexican States," as in the treaty of 1848, or by the "Republic of Mexico," as in the treaty of 1853. If this was the only source of the titles under which Mexicans could claim lands, such a construction would, as is claimed by the Government in this case, sweep away every land title in Sonora that had not been granted by the Republic, or by Spain.

This was the purpose of Santa Aña's terrible ukase, but our Congress annulled it or repudiated it in the act of March 3, 1891.

18. Sonora could, as proprietor, make grants of land or sales of land for a consideration in money, and it is a sale of land and not a grant of land that the court is now considering.

This state of the case is important to be considered with reference to article VI of the treaty of 1853.

That article is peculiar, in that it fixes a date prior to the conclusion of the treaty—the 25th of September—when the minister of the United States "proposed to the government of Mexico to terminate the question of boundary," as the date that should terminate the power of the Republic of Mexico to make grants of land.

The good faith of the Mexican government was seriously questioned by our insistence on this provision in the treaty.

This abundant caution may have been inspired by a feeling of distrust in the good faith of Santa Aña, who was then President, or, more likely, by the fact that the United

States had experienced great embarrassment in Florida in respect of grants made during the interval between the conclusion of the treaty of 1819 and its ratification by the King of Spain, and in Louisiana from like questions. (*U. S. vs. Arredondo*, 6 Peters, 706; *Foster vs. Neilson*, 2 Peters, 306.)

The grants of land mentioned in article VI of the treaty of 1853 were only such as *the Republic* had the exclusive power to make, and the provision that grants made before the 25th of September, 1853, should "not be respected or considered as *obligatory* which have not been located and recorded in the archives of Mexico" must relate to grants *made by the Republic and recorded in its archives.*

19. If Sonora had the right to grant or sell lands to Mexicans it must have had the right to locate the lands and to keep the record of the transaction in its archives. These are not the archives of the Republic of Mexico. Congress declares, in accordance with the treaties, that such grants were valid if lawfully derived from the States, and does not add that they are void unless they are recorded in the archives of Mexico. In cases free from fraud that rest on a title lawfully derived from Sonora, Congress in the act of 1891 empowers the court to confirm the grant without its having been recorded in the archives of Mexico.

20. The jurisdiction of the court attaches in this case, because Congress, in giving legislative construction and effect to these treaties, has provided that "legitimate titles" to land derived from the States of Mexico may be subjects of adjudication.

If location and registration are also requisites of a title

derived from Sonora this requirement is fulfilled by the fact that the original "matrix" of the "titulo" is found in the archives at Hermosillo.

As to this fact there is no dispute. The location of this land is established by a series of facts, partly of record and partly established by reference to natural objects, all agreeing in the specific designation of its actual geographical location on the face of the earth.

21. The "denunciation" of this tract of land was made in 1827, seventy years ago, as "the lands named San Ignacio del Babocomori, *situated* in the jurisdiction of the presidio of Santa Cruz," and the denouncement, being in writing, "was admitted, according to the law, on the 1st of July, 1827, and the writing of denouncement and the other proceedings in relation thereto are as follows."

22. The written denouncement and all the other proceedings were filed and made a record in the archives of Sonora as the "matrix" of the "titulo."

Then follows, in the proceedings, the petition of Ignacio Elias and his sister, Eulalia Elias, in the words following :

"To the Treasurer General :

"We, Ignacio Elias and Eulalia Elias, present ourselves before your honor, respectfully representing that, needing a tract of land for our stock, we denounce, *in company with Don Rafael Elias, Captain Ignacio Elias, and Don Nepomuceno Feliz, the vacant tract of land adjoining the rancho of San Pedro, situated in the jurisdiction of the presidio of Santa Cruz, as far as the place of Tres Alamos, obligating ourselves to pay to the nation the corresponding tax, with all other matters that justice may require, until the title and confirmation thereof shall be obtained ; wherefore, your honor will be pleased to consider the vacant tract referred to, petitioned*

for; wherefore, we pray your honor to be pleased to order as we have prayed for, in which we will receive favor.

"ARIZPE, *March 12th*, 1827.

"In the absence of and at the request of—

"DON IGNACIO ELIAS.

"JOAQUIN ELIAS.

"EULALIA ELIAS."

23. In this petition no claim was made for any specific number of sitios of land nor lands of any particular shape or dimensions. What was claimed was "*a tract of land for our stock*," and it was described generally as "the vacant tract of land adjoining the rancho of San Pedro, situated in the jurisdiction of the presidio of Santa Cruz as far as the place Tres Almos." It was made on behalf of three persons, so that *the general tract* had to be apportioned. The law limited to each person four sitios, *unless they should show that they needed more land for pasturage*.

24. On the same day, July 1, 1827, the petition and denouncement were referred to Nicolas Maria Cajiola, the treasurer general of Sonora, who "thus decreed and signed" "that the alcalde of Santa Cruz will proceed in the matter under the authority which is conferred on him, without prejudice to a third party who may have a better right, first citing the colindantes (neighboring proprietors) to *the measurement*, valuation, and publication for thirty days consecutively of *the lands* referred to in the denouncement."

25. The alcalde was Alejandro Franco, constitutional alcalde of the presidio of Santa Cruz, who had for his assistant Ramon Romero, acting by special authority in the absence of a notary public, according to law. The name of

the alcalde was signed by Ramon Romero to the papers, evidently because the alcalde could not write his name, and it was attested with his mark.

26. He went to San Pedro on the 5th of October, 1828, "for the purpose of *measuring* the lands petitioned for by the petitioners."

The land had been located in the petition by a public geographical name and by the denouncement in writing, "which was admitted according to law" by the treasurer general of Sonora as "the lands named San Ignacio del Babocomori, in the jurisdiction of the presidio of Santa Cruz." In the caption to the "titulo" it is called "the place named San Ignacio del Babocomori," an admission of record that Mexico or Sonora could not refuse to give effect to.

27. This "place" was as distinctly located geographically and by common recognition and tradition as it was in these records, and they were all in perfect correspondence.

28. Places are very commonly the subjects of judicial knowledge, according to their recognized names, and when they are named the proof of their existence or location is seldom made otherwise. They are described merely by name and are identified by the common knowledge of the people in or near them—such as "Lafayette square" or "Scott circle," or "Mount Vernon place," in the District of Columbia. A conveyance or a condemnation of such a place would be sustained as being sufficiently definite and accurate by the name to which common consent would assign lines of boundary.

"The place called Ignacio del Babocomori," "in the jurisdiction of the presidio of Santa Cruz," and "adjoining the Rancho San Pedro," in the State of Sonora, is described, first, by the location of a State; second, of a civil jurisdiction; third, of an established rancho which it joined; fourth, by a name that no other place in Mexico has ever had. No one would ever fail to find the location of that place or be at a loss to understand why it is called "a place" and is given a distinctive name. In the arid mountains, it is a narrow plain that is nearly surrounded by high hills, in which there is good grazing for horses and horned cattle. The indispensable part of the place is that from which it takes its name—Babocomori creek—which rises near the foot of the Santa Rita mountains and runs east in a line that is remarkably straight to San Pedro river, which it enters nearly at right angles.

As a place for grazing horses and horned cattle in large herds and on a remote and dangerous frontier, no one in describing it as to its location or uses would have ever thought of saying that it contains eight sitios of land. That would confuse the description instead of making it plainer.

It was denounced as a place as land for the raising of "our stock." The denunciation was admitted "according to the law" for that purpose, and "the law of 20th May, 1825, No. 30," is stated as the legal basis of the entire proceeding. That is a special statute *that relates solely to the disposal of lands for the encouragement of stock-growing*. It has no reference to colonization, which requires residence on the lands. The colonization laws relate to actual, permanent settlements, to be supported chiefly by agriculture, and the entire law is different in every way from the decree

No. 30, of the 20th of May, 1825. This law was a revision of the old law by a decree of August 18, 1824, more than a year before provision was made *for selling lands* to stock-growers.

29. For all the purposes of certainty in the location of "the place called Ignacio del Babocomori," the description so given, admitted, and adopted as the description of the land claimed by the petitioners, in the decree of the treasurer general of Sonora, was sufficient to support a grant for a stock farm.

30. But this was not a grant, in the meaning of the Mexican law, for the statute cited in the proceedings made it a sale for money, and it was attended with mutual covenants of the vendor and vendee.

31. To complete the sale, according to law, an upset price must be fixed on the land by valuation, and to prevent the monopoly of land, or more especially of water, a survey was made necessary by the law.

Four sitios was the limit of the sale to a "new breeder" under section 21; but "to those who from the abundance of their stock need more, although old breeders, *the treasurer general shall grant so much more as they need*" (Reynolds, 129, 130). Nicholas Maria Gajiola was treasurer general of Sonora, and acting under these ample powers he directed, adjudged, and concluded and confirmed the survey and sale of the lands.

After admitting the denunciation according to the law, and after examining the writing of denouncement and the

petition based upon it, he decreed that "the Alcalde of Santa Cruz will proceed in the matter under the authority which is conferred upon him, without prejudice to a third party who may have a better right, * * * *to the measurement, valuation, and publication for thirty days, consecutively, of the lands referred to in the denouncement, subject to the sovereign decree of the honorable constituent congress of the State, number 30, of the 20th May, 1825, and to the regulations accompanying the same.*"

This decree did not provide for a *location of a grant*, but for the measurement of the land covered by the "place" or tract to be offered at public biddings for sale, and for its valuation or as much more as a higher bidder might give for it.

It was plainly evident from the language of this decree, which expressly referred to the written denouncement, that it was "*the place*" that the three Eliases (two of them jointly) desired to purchase, and not 8 or 12 sitios to be carved out of the place; and such was, also, the clear purpose of the treasurer general, as it more distinctly appears in his further decree upon the survey and valuation of the tract set apart to Ignacio and Eulalia Elias.

32. The word "sitio" in a survey of agricultural lands means a league or 4,338,464 acres, or, in a sheep ranch, 1,928,133 acres. This is a wide discrepancy, but it accords with the fact that the generic word "sitio" means a *location* and is not an admeasurement, except as it is defined by law in its particular application to special uses to which the land is to be devoted. A comparison of sections 17, 24, 27, 30, and 31 of the act makes this very clear.

The power given the treasurer general by section 20 of this law to *grant* to "old breeders" only "so much more as they need" is not confined to any measurement or limited to any number of sitios, nor is the price fixed. That policy would restrict stock-breeding instead of giving it encouragement. It is manifest that in the wild frontiers Sonora *was not selling lands by the acre to get revenue, but by the location to supply food for the people and to repress the savage tribes of Indians roving over that country.* It was a wise public policy that gave to the Treasurer General under cautious examinations the full discretion to make additional *grants* of land to old breeders when they had bought and paid for large tracts of adjacent pasture lands. The apparently loose and careless way in which the lines of this survey were made at the eastern and western boundaries of this place is accounted for by the fact that *the petition did not call for any number of sitios, but for a named place suited to stock-growing, and that Elias was an "old breeder" and would get all the land available for water and grass in the little valley of which Babocomori creek was the real feature of any importance.* Their search was for the natural boundaries of the valley along its water-shed, and natural objects were properly selected to stand for monuments to designate the corners and to demark the boundaries. *The center line had water springs, tanks, and reservoirs for its monuments and the exterior lines had hills, rocks, and trees for their monuments.*

33. When the survey was reported the question of the excess of land over eight sitios *came squarely up for adjudication, and it was then determined by the lawful and plenary*

authority of the Treasurer General of Sonora, on the approval of the proceedings by the Attorney General, Felipe Gil.

The Attorney General then saw "from the surveys" as reported in writing, in the same way that *Flipper afterwards* saw it, that there was a large excess over eight sitios in the tract set apart for Ignacio and Eulalia Elias, whose corners had been established "in the place of San Ignacio del Babocomori," and he thus states the fact: "I find nothing in the proceedings to prevent *adjudication* of the land to the petitioners, unless it be that the quantity exceeds that mentioned in article 21 of the decree of 20th of May, 1825." Here was a statement of the proper law officer that the quantity in the tract *exceeded the ordinary limits of the law*—eight sitios; "but if your honor is satisfied as to the requirements recited in the 22d (article) I am of the opinion, that *the land be sold to the denouncers*, if there should be no one willing to pay a higher price (then) for the same." This opinion was given on December 20, 1828.

"And the Treasurer General having been (being) *satisfied with the foregoing request* of the Attorney General," the land was sold to the denouncers, Ignacio and Eulalia Elias.

Now, if it is assumed that no more than eight sitios were sold and paid for on the 24th of December, 1828, it does not follow that the survey of the tract or place was not confirmed, and that the conveyance by Mendoza "by way of sale" did not also lawfully include a grant within the limits of the survey "*of so much more as they need*" for the *use of their cattle and horses*, which was demarked by natural objects.

Ut res magis valebat quam pereat, the words "give and *adjudicate* by way of sale," may well apply to the final offering

of the land by the "order" of the Junta des Almonedas, for which *Elias* made no bid, but stood on the offer to pay the valuations, and the word "grant" may apply to the place "named San Ignacio del Babocomori," as it was designated by the survey.

34. When the money was paid for the land the record states that it was paid for at the price "*at which the said tract of land in the place of Babocomori was valued and sold.*"

35. Up to this point in the proceedings neither *Elias* nor any officer concerned in the sale of this land had said anything about eight sitios of land, except that the alcalde surveyor in valuing the land said that six sitios contained running water and two were dry; and the Attorney General said in his report to the Treasurer General that the *expediente* contained *eight sitios of land* for breeding horned cattle and horses, and that *the quantity exceeds* that mentioned in article 21 of the decree of 20th of May, 1825; and he recommended, "requested," the sale of the land to the denouncers, although it was in excess of eight sitios in area, according to the survey, which only fixed the center line by measurement and estimation and the end lines by natural and other monuments at the corners of the tract "in the place of San Ignacio del Babocomori" without actual measurement.

This "request" was granted and confirmed by the Treasurer General, and the Junta des Almonedas acting with him ascertained that no purchaser had come forward to bid more than the valuation. The sale was ordered by this convocation—the Junta—the cry of the auctioneer being, "Let it be

sold! Let it be sold! Let it be sold! Sold to Don Ignacio and Donna Eulalia Elias." "In which terms said act was concluded," etc. The eight sitios made the minimum cost of the land, by that measurement, to any purchaser who would bid more for it, but the grant in excess of that measurement to "the old breeders" would not necessarily have passed by the sale to inexperienced breeders. Evidently this was not a sale by *varas* or *sitios* or any exact measurement, for such a sale, if limited to eight sitios, would exclude the *denouncers* from the benefit petitioned for and granted them by the Treasurer General as "old breeders" of horned cattle and horses of all that "place" as land *needed by them for that purpose*. By selling them eight sitios at the government price, Sonora received all that was demanded by her agents for the entire place called "San Ignacio del Babocomori," that being their own valuation and manifestly a full price, the Eliases not having bid that or any other sum, but having agreed in their petition for the place as follows: "Obligating ourselves to pay to the nation the *corresponding tax* (valuation), with all other matters that justice may require until the title and confirmation thereof shall be obtained." The law required them to pay the costs and expenses of the survey, which were quite considerable, and were not to be returned to them in any event.

36. The "tax" was assessed by the valuation of the land, which was *estimated* at eight sitios, of which six had running water. On every occasion when eight sitios are mentioned in the proceedings it was with reference to the *estimated* value of the *estimated* quantity, and not with reference to the exact measurement of the area of land that

was sold. To prevent monopoly of water, one person could not purchase less than four sitios of land for stock-raising.

37. The quantity of land was the least important factor in the purchase. So little, indeed, was the quantity considered that no other rancho has been established or petitioned for to this time in "the place called San Ignacio del Babocomori." The main purpose of this official survey was to fix the corners of this "place" with reference to natural monuments so as to establish by law a place for a rancho that was known geographically by a certain name, which "place" included a good water supply. It is still "the place San Ignacio del Babocomori," and is so described in all the papers *and by every witness in the case*. The corner monuments and the center monuments are still there, some of them permanent natural objects, and others are artificial.

38. These legal proceedings were closed on the 24th of December, 1828.

Four years later, on 25th of December, 1832, the "titulo" in evidence in this case was made out by the then Treasurer General José Maria Mendoza, *from the record made by his predecessor, Cajiola*, to which Mendoza added a "*formal title in favor of the citizen Ignacio Elias and Donna Eulalia Elias for their security.*"

In April, 1833, Bustamente, the Governor of Sonora, by a decree, No. 762, ordered the then Treasurer General to issue *grant titles* to Ignacio Elias and Eulalia Elias for "San Ignacio del Babocomori, situated in the jurisdiction of the presidio of Santa Cruz," in conformity with the provisions of decree No. 27 of the 11th August, 1831.

If this additional muniment of title was ever issued, it is not in the record, but the order for its issue is sufficient to supplement the previous "formal title" *delivered to them for their security* "and to constitute a confirmatory grant in favor of the Eliases, to whom were sold on the 24th December, 1828, San Ignacio del Babocomori."

This decree and record fully sustains the claim set up in this case by showing conclusively that "San Ignacio del Babocomori" *had passed into private ownership* in good faith and by such legal acts and formalities as bound Sonora to make the title good in law if it was not complete in form. This decree was one of divestiture of title and its investiture in purchasers who were innocent, if any further act or declaration was necessary.

39. No act of these purchasers and no omission or neglect of theirs can be cited from the evidence to show laches or covin on their part. They are in court with clean hands petitioning for just rights.

40. Immediately upon the completion of this purchase the Eliases proceeded to establish their rancho at the place called "Ignacio del Babocomori." They built houses there and had a *major domo*, with his family, to reside on the land, with other herdsmen in charge of large herds of horses and cattle, and that possession was maintained by them with strong hand against hostile Indians and by their successors against the scarcely less savage intruders; and this compliance with their covenants has cost the expenditure of much labor and money and human life. Not for a day has this rancho ever been abandoned by its owners. When

Congress gave to the trespassing squatters on this rancho the sanction of a legalized right of occupancy the contention for title and possession necessarily became a question proper for the courts. Not content with this form of security and shelter against honest owners, these persons have constantly resorted to violence to protect their unlawful trespass and have killed those who went on the lands to examine or survey them.

This fact is established in all the depositions that relate to the subject. Even Flipper, whose clientage is among the squatters and makes himself conspicuously active in his efforts to destroy the rights of honest purchasers in his pretended zeal for the United States, was afraid to attempt an actual survey of the land in question. He preferred to rest his opinions upon a blackboard demonstration of the scraps of engineering information he had picked up in a partial military education at West Point and his knowledge of the Spanish language obtained in his association with the mixed races of white men, Mexicans, negroes, and Indians that inhabit this wild frontier; but even Mr. Flipper found the landmarks and piles of stones collected for monuments of the old Mexican survey made seventy years before he was ever on that soil.

He found it impossible to read intelligently the field-notes of the unskilled alcalde, but he could still trace the center line of the survey as the alcalde had established it and as every one else has recognized it from that day to this, and he found nearly every pile of stones and all but one of the natural monuments described in the field-notes of the alcalde.

Flipper's testimony, without being so intended, gives very strong support to the survey of the alcalde.

Mexico did not intend to convey to the United States as against the citizens of Sonora, with whom she was about to part with mutual and deep regret, any right to lands held by them in good faith; and this is the spirit of the treaty for the Gadsden purchase. This is the true intent of that treaty.

At the date of that treaty the Republic of Mexico had no right in law or equity to the "Place San Ignacio del Babocomori," and that government had no intention and no right to drive the owners from their lands and to resume the title or the possession thereof.

If Mexico had no such purpose or right as against her people in Sonora, the treaties with the United States prohibited us from setting up a claim as a sovereign power that Mexico had no right to assert.

Under the treaties and under the act of 1891 the United States have consented to be sued in our courts as to any of these alleged rights of the Mexicans, and have empowered those courts with full equity jurisdiction in reference to all such matters. Under that authority the Supreme Court and the Land Court can make any decree that justice may require to protect the interests of all concerned.

The courts have express authority to cause surveys to be made and to execute a sale or grant of land by Mexico, in whole or in part, according to the very right of the matter. If the survey of this land by the alcalde is not exact—if he has made a mistake as to the quantity of land included in the metes and bounds designated by him or in any form of proceeding—still enough is left of record that is undisputed to enable a court of equity to do justice to innocent pur-

chasers who have done all they could to comply with the laws in their payment for the land, in protecting it and the neighboring country from the depredations of hostile Indians in order to promote a necessary public policy, and in maintaining a force there that has protected the lives and food of the people.

Continued possession without any thought of abandonment for sixty years, and the payment of large sums for taxes and for permanent improvements, without objection from Sonora or Mexico or the United States, or any intimation of an adverse claim from any source, establishes a prescriptive right to this land that is coextensive with the area so occupied and claimed that a subsequent purchaser must respect, whether the purchaser is a government or only a private person. The United States cannot rely on the maxim "*nullus tempus occurrit regi*," because the treaty concedes to Mexican claimants the right to set up title by prescription against the Government.

JOHN T. MORGAN,

Attorney for Appellant.

30.
Brief of Meredith for Appellants.

JAN 3 1898
JAMES H. MCKENNEY
CLERK

30
Filed Jan. 3, 1898.

IN THE SUPREME COURT OF THE UNITED STATES.

(October Term, 1897, No.)

ROBERT PERRIN

VS.

THE UNITED STATES ET AL.

Argument of J.H. Meredith for Appellants.

Filed this day of January, 1898.

By Clerk.

Deputy Clerk.

IN THE
SUPREME COURT
OF THE
UNITED STATES.

ROBERT PERRIN

VS.

THE UNITED STATES ET AL.

Argument of J. H. Meredith for
Appellants.

The court below disposed of this along with a group of similar cases adversely to the respective claimants.

No written opinion was delivered in this particular case, but the Court in orally announcing its decision held that the State of Sonora did not have the power to grant the public lands. It was also contended by counsel for the United States that this grant was void for the reason also that it exceeded four sitios; and that the distances from the center monument to the

several boundary monuments, as contended for by the claimant, were much greater than is stated in the original survey upon which the grant was made, thus seeking to call in question the identity of the boundaries as shown by our proofs.

Presuming that these points will be again raised against the grant, we will address ourselves to them.

I.

The State of Sonora had the power to make grants of land.

This Court will take judicial notice of the laws and customs of Mexico on this subject. The courts of a country acquiring territory from another will, without proof, take notice of the laws and customs of the former sovereignty as they existed before the cession in so far as they may affect rights arising in the ceded territory. It is unnecessary, therefore, that the record in this case should contain proofs of such laws and customs.

In considering what was the law prevailing in this territory before its acquisition by the United States, it should be borne in mind that in Mexico the written law was meager and lacking in precision, and that there were no reports of adjudicated cases. Much was left to custom and to the discretion of the higher officers.

It was the custom universally followed for the several States to sell the public lands within their respective limits, and this custom was acquiesced in by all the officers of the republic, whose duty it would have been to challenge the validity of the sales had they been illegal. Neither the legislative, the judiciary or the executive ever called them in question, nor was there any attempt made to dispose of the lands in any other way.

We quote an extract from an opinion of Mr. R. C. Hopkins, the whole of which opinion is set forth in a

brief of Senator Morgan on file in this cause. Mr. Hopkins was for many years keeper of the Spanish archives, an office created by the United States expressly to preserve and to explain and translate the Spanish and Mexican archives relating to the vast number of grants comprised within California. His knowledge on such subjects has received praise from the Supreme Court of California in the reports of that Court. The following is the extract:

"From all that can be gathered from the political history of Mexico, and from the customs of the country in surveying lands, as shown by the records, it is seen:

"First. That the State of Sonora was, under the law of the 4th of August, 1824, authorized to dispose of the public lands lying within the limits thereof: and

"Secondly. That the tract of land called San Ygnacio del Babacomari, sold to Ygnacio and Eulalia Elias, was segregated from the public domain by a survey made in accordance with the usual customs of the country, and that the locus of the tract surveyed was much more definitely fixed than were the boundaries of most of the grants in California about the same time."

The fact that in not one of the large number of cases now before this Court, including the case of Ainsa vs. U. S., already decided, in all of which the grants were made by the State of Sonora or its predecessor, the State of the West, has the central government made the grant, goes to show what the custom was.

The central government expressly recognized the ownership and the right to sell the vacant lands on the part of the State. The law of April 6th, 1830, provides:

"Article 3. The government shall appoint one or more commissioners whose duty it shall be to visit the colonies of the frontier States; to contract with the legislatures of said States for the purchase by the na-

tion of lands suitable for the establishment of new colonies of Mexicans and foreigners; to enter into such arrangements as they may deem proper for the security of the Republic with the colonies already established; to watch over the exact compliance of the contracts of new colonists, and to investigate how far the contracts already made have been complied with."

Finding as we do in all these cases, and in the particular case under consideration, that officers of the State, in the name of the State, actually exercised the power of disposing of vacant lands for the public benefit, we are to presume *prima facie* that they lawfully exercised such powers. The burden of showing the contrary is upon those questioning the right. These were public officers, if they were systematically violating their duty, they would, of course, be liable to punishment or removal. Their acts in this behalf were public and notorious. The language used by this Court is pertinent.

United States v. Arredondo, 6 Pet., 714.

" There is another source of law in all governments—
 " usage, custom—which is always presumed to have
 " been adopted with the consent of those who may be
 " affected by it. In England, and in the States of this
 " Union which have no written constitution, it is the
 " Supreme law; always deemed to have had its origin
 " in an Act of a State Legislature of competent power
 " to make it valid and binding, or an Act of Parlia-
 " ment; * * * the Court not only may, but is bound to
 " notice and respect general customs and usage, as the
 " law of the land, equally with the written law, * * *
 " such would be our duty under the Act of 1824, though
 " its usages and customs were not expressly named as
 " a part of the laws or ordinances of Spain."

The disposition of these vast tracts of land may be considered historical, and as such may be referred to in argument, although forming no part of the record. The exterior limits within which Nogales grant was comprised, which grant, like all the others, was made by the State of Sonora, and which was before this Court in the case of *Ainsa v. U. S.*, lay partly in the ceded territory and partly upon the Mexican side of the adjusted boundary. Now that grant was for four sitios or leagues within boundaries containing more than said quantity. Sufficient land to suffice the grant lay within Mexico, after the treaty. The Mexican authorities, out of this portion, laid off and delivered to the grantee four sitios, thus fulfilling the grant and recognizing the authority of the State to have made it.

This Court, in said case, did not refer to these facts, but they were in the record; and may have influenced the Court in rejecting the grant, because, otherwise, it would have resulted that the grantee would twice have gotten all that was originally intended to be given.

We may reasonably argue that the authority of the decision in said case is in our favor, upon the authority to make the grant. This, of course, was the first question, and the most important and general, presented in the record in said case. The Court does not base its conclusion upon the point that there was no authority to make the grant, as it would naturally have done, had it deemed the objection well taken; but it rather assumed that the grant was valid, but, being unlocated, was not one of those provided for in the treaty, and therefore, however valid, not within the jurisdiction of the Court of Private Land Claims. The said Court being expressly limited in its jurisdiction to the consideration of those grants referred to in the treaty.

II.

The power of the several states of Mexico to dispose of the public lands within their respective borders can be upheld by other reasons than usage and custom; by reasons depending upon the nature of the Mexican Government. It resembles our own, was modeled upon it. Its name is the United States of Mexico. The states are sovereign, subject to the powers of the general government.

The right to dispose of public lands is an attribute of sovereignty, and, as to such lands within its borders, it vests in any one of the states of this Union, or of the United States of Mexico, unless there be something in the Constitution or laws of the respective countries to the contrary.

In our own Union we find that the original Thirteen States sold and issued patents for the public lands; and the titles thereunder have never been questioned. Yet there is nothing in the Federal Constitution or in the Acts of Congress giving such right. It has been treated as an ordinary act of sovereignty. Much of the lands in New York, Virginia and other states was disposed of in this manner. The right of the United States to dispose of much of the land in Ohio and other adjoining states arose only upon a grant made by the State of Virginia to the United States.

With respect to the states since admitted into the Union, the same result would have taken place were it not that the various Acts of Congress admitting them contained express conditions on the subject. The Act admitting California may be taken as an instance. Section 3, of the Act for the Admission of California, approved September 9, 1850, provides, "And it is further enacted, That the said State of California is admitted into the Union upon the express condition that the

“ people of said State, through their Legislature, or
 “ otherwise, shall never interfere with the primary dis-
 “ posal of the public lands within its limits, and shall
 “ pass no law and do no act whereby the title of the
 “ United States to, and right to dispose of, the same
 “ shall be impaired or questioned.”

We are not, however, left to custom, acquiescence and recognition, nor to the sovereign attributes of the states on this subject. The Act of Congress of Mexico of August 18, 1824, is as follows:

“The Sovereign General Constituent Congress of the
 “ United Mexican States has been pleased to decree:

“ 1st. The Mexican Nation promises to those
 “ foreigners who may come to establish themselves in
 “ its territory, security in their persons and property,
 “ provided, they subject themselves to the law of the
 “ country.

“ 2nd. The objects of this law are those national lands
 “ which are neither private property nor belong to any
 “ corporation or pueblo, and can therefore be colonized.

“ 3rd. To this end the Congress of the States will
 “ form, as soon as possible, the laws and regulations of
 “ colonization of their respective demarcation with en-
 “ tire conformity to the constitutive act, the general
 “ constitution and the rules established in this law.

“ 4th. Those territories comprised within twenty
 “ leagues of the boundaries of any foreign nation, or
 “ within ten leagues of the sea coast, cannot be colo-
 “ nized without the previous approval of the supreme
 “ general executive power.

“ 5th. If, for the defense or security of the nation, the
 “ Federal Government should find it expedient to make
 “ use of any portion of these lands for the purpose of con-
 “ structing warehouses, arsenals or other public edi-
 “ fices, it may do so, with the approbation of the Gen-

“eral Congress, or, during its recess, with that of the Government Council.

“6th. Before the expiration of four years after the publication of this law, no tax or duty (*direcho*) shall be imposed on the entry of the persons of foreigners, who come to establish themselves for the first time in the nation.

“7th. Previous to the year 1840, the General Congress cannot prohibit the entry of foreigners to colonize, except compelled to do so, with respect to the individuals of some nation, by powerful reasons.

“8th. The Government, without prejudicing the object of this law, will take the precautionary measures which it may consider necessary for the security of the Federation, with respect to the foreigners who may come to colonize. In the distribution of lands, Mexican citizens are to be attended to in preference, and no distinction shall be made amongst these, except such only as is due to private merit and services rendered to the country or inequality of circumstances, residence in the place to which the lands distributed belong.

“10th. Military persons, who are entitled to lands by the promise made on the 27th day of March, 1821, shall be attended to by the States, on producing the diplomas granted to them to that effect by the supreme executive power.

“11th. If, by the decrees of capitulation, according to the probabilities of life, the supreme executive should see fit to alienate any portion of land in favor of any military or civil officers of the Federation, it may so dispose of the vacant lands of the *territories*.

“12th. No one person shall be allowed to obtain the ownership of more than one league square, of five thousand varas (5000 v.) of irrigable land (*de regadio*)

“ four superficial ones of land dependent on the sea-
 “ sons (de temporal) and six superficial ones for the
 “ purpose of rearing cattle (de abreradiso).

“13th. The new colonists cannot transfer their pos-
 “ sessions in mortmain (manos muertas).

“14th. This law guarantees the contracts which the
 “ grantees (empresarios) may make with the families
 “ which they may bring out at their expense; provided
 “ they be not contrary to the laws.

“15th. No one who, by virtue of this law, shall ac-
 “ quire the ownership of lands, shall retain them if he
 “ shall reside out of the territory of the republic.

“16th. The Government, in conformity with the prin-
 “ ciples established in this law, will proceed to the
 “ colonization of the *territories* of the republic.”

It will be observed that this Act, not merely purports to confer, but recognizes, as already existing, the power of the States to dispose of vacant lands; and it also shows that it was the policy anxiously fostered by Government to encourage the settlement of vacant lands. And, after providing with much detail for the disposal of them by the several States within their respective limits, the Act goes on in the 16th section to provide and declare that the same policy will be pursued by the Central Government respecting the vacant lands in the *territories*.

In compliance with the provisions of this law the State of the West, the predecessor of the State of Senora, passed the following law:

“ The Constituent Congress of the free, independent
 “ and sovereign State of the West has seen fit to decree
 “ the following provisional law for the regulation of
 “ the purchase of the lands of the State.

" FEES FOR THE TREASURY OF THE STATE.

" Art. 1. For each dry sitio that can only serve for
" pasturing stock, ten dollars.

" Art. 2. For those where well water can be ob-
" tained, thirty dollars.

" Art. 3. For those that have spring or river, sixty
" dollars.

" Art. 4. The values designated in the preceding
" articles are considered the minimum for sitios, which
" can in no case be reduced.

" FEES OF SURVEYORS.

" Art. 5. For the survey of one sitio, twenty-five
" dollars.

" Art. 6. For that of two for the same party, thirty-
" seven dollars, four reals.

" Art. 7. For that of three for the same party, fifty
" dollars.

" Art. 8. For that of four for the same party,
" sixty-two dollars, four reals.

" Art. 9. When the surveyor surveys several si-
" tios, but for different parties, when they do not ex-
" ceed one for each applicant, he shall charge twenty-
" five dollars.

" Art. 10. For proclamations and management, up
" to putting the expediente in condition for final sale,
" twenty-five dollars.

" Art. 11. Stamped paper shall be at the expense
" of the parties interested.

" FEES FOR THE LAST PUBLIC OFFER.

" Art. 12. For three proclamations of the last pub-
" lic offer and sale, six dollars.

" Art. 13. For the opinion of the Attorney-General,
" three dollars.

“ Art. 14. For the drum and proclamations, two
“ dollars.

“ Art. 15. The title shall be given gratis.

“ Art. 16. Stamped paper is at the expense of the
“ parties in interest, to whom nothing shall be charged
“ for the notices and formal proceedings customary in
“ the last public offers.

“GENERAL PROVISIONS.

“ Art. 17. The surveyors shall be the Alcaldes
“ (mayors) of the towns to whose jurisdiction belong the
“ sitios registered, but with the authority which the
“ Treasurer-General shall previously delegate to them
“ for the purpose.

“ Art. 18. To this end the parties in interest shall
“ present themselves directly to the Treasurer-General,
“ and he shall make the proper delegation at the end
“ of the application.

“ Art. 19. The Treasurer, as the immediate head
“ (chief) of all the revenues, shall make the sales (and),
“ give the titles.

“ Art. 20. The Collector of Revenues at the capital
“ shall always be the Attorney-General.

“ Art. 21. To no one who is a new breeder shall
“ more than four sitios be given.

“ Art. 22. To those who, from the abundance of
“ their stock, need more, although old breeders, the
“ Treasurer-General shall grant only so much more as
“ they may need.

“ Art. 23. The Treasurer shall endeavor, by all the
“ means in his power, to satisfy himself of the truth,
“ before making the grant which the preceding article
“ prescribes, and the party in interest shall take no
“ part in the steps he may take to secure that end.

“ Art. 24. No one shall obtain any sitio for live
 “ stock without first proving, in the opinion and to the
 “ satisfaction of the Attorney-General, that he has suf-
 “ ficient to be called a breeder.

“ Art. 25. The Treasurer, to verify the truth, for
 “ the purpose to which the preceding article refers,
 “ may order an investigation made, or such secret in-
 “ formation taken, as may occur to him.

“ Art. 26. For the valuation that should be made
 “ of the sitios, on the basis of the value which the law
 “ prescribes for them the Surveyor-Alcaldes shall ap-
 “ point persons entirely impartial to the interested
 “ parties, and they shall, after being informed of their
 “ obligations, proceed to discharge their commission,
 “ with attention to the more or less fertility of the
 “ lands, their location and other circumstances, in or-
 “ der to give them the value they justly deserve.

“ Art. 27. Those who possess sitios, and who, al-
 “ though they have them registered and surveyed, have
 “ not obtained the title, shall present themselves to the
 “ Treasurer-General and shall state in writing the
 “ cause of that failure, the deputy or Judge who sur-
 “ veyed them for them, and the outlays they have made.

“ Art. 28. The Treasurer shall fix, for this purpose,
 “ the time that seems to him proper, and, as soon as he
 “ gets all the information together, shall render a re-
 “ port to the Government, which shall order the
 “ proper steps taken, with regard to the rights of the
 “ parties interested and the interests of the treasury.

“ Art. 29. The Treasurer shall give the necessary
 “ methods and instructions to his surveyors, that the
 “ surveys may be legal and correct.

“ Art. 30. It shall be the obligation of owners of
 “ sitios to place at their bounary termini the monu-
 “ ments of stone and mortar ordered in repeated laws,

"as soon as possession thereof is given them; and, if
 "within three months from the day the survey is con-
 "cluded they do not do so, they shall incur a fine of
 "twenty-five dollars, which the Surveyor-Judge shall
 "exact of them, for the public funds, and besides
 "shall order the monuments constructed at the ex-
 "pense of the parties interested.

"Art. 31. Those who have an order for the registry
 "of sitios under the former practice, are guaranteed
 "under this law.

"Art. 32. The tax for army expenses, the half an-
 "nata tax, and the percentage which the former Gov-
 "ernment collected as a general tax, are abolished."

The sale of vacant lands has always been one of the
 largest sources of revenue in all Spanish American
 countries. The Republic of Mexico in reserving certain
 sources of revenue and income, for the Central Govern-
 ment expressly provides that all other revenues belong
 to the states.* The Act of the General Congress of
 Mexico, of Aug. 4th, 1824, provides as follows:

"8. That of the territories of the Federation.

"9. The national property, in which are included
 "those of the inquisition, and the temporalities, and
 "all the properties which belong to the public treasury.

"10. There shall vest in the disposal of the Federal
 "Government the buildings, offices and lands thereto
 "annexed, which pertain to, or have pertained to, the
 "general revenue, and those which have been built at
 "the expense of two or more provinces.

"11. The revenues which are not included in the
 "foregoing articles belong to the states."

It will be observed that this Act seems to take for
 granted that these revenues already belong to the
 states.

We are unable to find any law of the Republic of Mexico asserting ownership by the Nation of vacant lands in the states. The Constitutive Act of 1824 contains no such assertion.

See White's Recopilacion, Vol. 1, p. 374.

Nor does the General Constitution of 1824, see p. 387.

But we do find that the various states claimed such lands by the express language of their constitutions.

Con. Texas and Coahuila, Art. 10.

Con. State of Mexico, Art. 10.

Con. Neuvo Leon, Arts. 2, 3, 4.

Con. Puebla, Art. 14.

Con. San Luis Potosi, Arts. 2, 3.

Con. Chihuahua, Art. 36, Secs. 2-7.

Con. Senora.

When the central system was adopted in Oct., 1835, the states were in effect abolished, and we find for the first time any assertion on the part of the Nation to dispose of any of the public lands.

Reynolds, p. 195 to 225.

This condition of the Mexican Government extended to Aug. 22, 1846, at which time the Constitution of 1824 was provisionally re-established, and on May 18, 1847, the Act of the Constitutional Reforms was enacted, which reinstated the Mexican Republic as it was under the Constitution and Constitutive Act of 1824. The preamble of this Act of the Constitutional Reforms contains the following:

"I. That the States which compose the Mexican Union have recovered the independence and sovereignty that were reserved to them in the Constitution for their interior administration.

" II. That said States continue united under the
 " compact that at one time constituted the political
 " mode of being of the United States of Mexico.

" III. That the Constitutive Act and the Federal
 " Constitution, sanctioned on the 31st of January, and
 " the 4th of October, 1824, form the only political Con-
 " stitution of the Republic.

" Reynolds, p. 281."

As this Act of Constitutional Reforms contains no provision for the power on the part of the Federal Government to dispose of vacant lands within the several states, it is conclusively shown by Section 21 that no such power existed. Sec. 21 is as follows:

" 21. The powers of the Union derive all from the
 " Constitution, and are limited solely to the exercise of
 " the powers expressly designated in the same, and it
 " shall not be understood that others are granted in the
 " absence of express restriction."

The ownership of the states is recognized in a communication by the Federal Government on Aug. 30, 1849, to the Governor of the State of Sonora. It is as follows:

" Most Excellent Sir: The Supreme Government is
 " informed that, on account of the disturbances in Up-
 " per California, especially in the gold placers, robbery
 " and murders have increased, and that the hatred of
 " Mexicans, Spaniards and Chilians has gone so far as
 " to prevent their living there, and that they have been
 " forcibly compelled to re-embark, and further informa-
 " tion has been added to this which indicates that in
 " that country there are no social guarantees.

" This has attracted the attention of his Excellency,
 " the President, and he therefore directs me to say to
 " your Excellency that he expects you to do all that is

“ possible to attract to yourself this population, in the
 “ understanding that public lands will be given to the
 “ emigrants on credit, and that, if that State does not
 “ cede them gratuitously, or if the emigrants cannot
 “ pay, it will be given them, nevertheless, as the Gen-
 “ eral Government obligates itself to indemnify said
 “ State in the manner to be determined at the proper
 “ time by the General Congress.

“ God and Liberty, Mexico, August 30th, 1849, LA-
 “ CUNZA.

“ Reynolds, p. 294.”

III.

Some objection was made to our proofs of the boundaries of the grant; upon the ground that the distances from the center monuments to the exterior ones appear to be greater than those mentioned in the original grant. To this we reply,

First. That the monuments are natural land marks and courses and distances must yield to their location. And the customs and open air life of the Mexican people are such that they rarely or never are mistaken in the identity of a mountain, a spring, or other natural landmark.

Secondly. The circumstance that a larger area than eight sitios was included within the grant was distinctly called to the attention of the Treasurer-General, and, acting under the powers conferred by Article 25, he nevertheless made the grant. Under said provisions he was permitted to make grants of larger area than four sitios to each grantee. His attention was directed to the fact that the boundaries of this grant included more than eight sitios. If the distances mentioned in the original grant should be taken as correct, the area

would be just eight sitios and the circumstance that the area was more than eight sitios could only result from the fact that the distances from the center to the exterior were greater than those mentioned in the rude survey. The question is thus narrowed to the proposition whether the Treasurer-General had the power to grant more than four sitios to each grantee. The exercise of his discretion in this behalf cannot be inquired into.

Thirdly. The whole point is regard to the survey, as proved by us, is based upon the language used by this court in the case of *Ainsa v. the United States*. The Court in that case proceeded upon the assumption that the English version of the treaty was a correct translation of the Spanish. The word "located" is not a correct translation of the word "inscrita." It scarcely needs a dictionary to show that the meaning of the word "inscrita" is "in writing." Of course, both versions of the treaty are original; but this Court, in the case of *Arredondo v. the United States*, in considering the treaty with Spain which effected the Florida purchase, declared that in interpreting that portion of the treaty which related to Spanish grants, the Spanish language should prevail over the English in interpreting the treaty.

Fourthly. If for a moment it could be argued that our proofs are not full upon the identity or location of the great natural landmarks which delineate the land in the original grant, we respectfully submit that, as the whole group of grants went off in the court below upon the question of the power of the Mexican States, we should, if this ruling of the court below be reversed, have the opportunity to amplify our proofs. The act giving the right of appeal to this Court provides that upon the appeal every question of fact and law shall be open. We also submit that there is absolutely no con-

tradiction of our witnesses in the record as to the natural monuments. Only some doubt is sought to be cast upon the artificial piles of stones.

This Court, in the decision in the Nogales case, did not intimate or suggest that the grant was invalid, but merely said that the jurisdiction of the Court of Private Land Claims did not extend to unlocated grants, that is grants of quantity within larger exterior limits. The sacred obligation of the United States would require the recognition of all grants, located or unlocated, which were valid under the laws of usages and customs of Mexico. There are many Congressional grants made by the United States which were unlocated when made and their validity has never been questioned. So, also, a fair half of all the Mexican grants made within the area of California were unlocated, being grants of limited quantity to be laid off within areas embracing more lands than the quantity granted. Such grants have been sustained by this Court and such grants, like the Nogales grant, within the territory comprised within the Gadsden Treaty would likewise have been sustained by this Court, were it not for the fact that the Court, mistakenly following the English version of the treaty, deemed the Court of Private Land Claims to be restricted to such grants as were located.

Now, let us assume, which is indeed the fact, that grants of limited quantity of land to be laid off within larger areas were perfectly valid under the laws of Mexico, would it not be the duty of the United States, regardless of treaty stipulations, to protect such grants under the law of nations? It might well be that Congress in creating the Court of Private Land Claims might restrict its jurisdiction; but the sacred obligation on the part of the Government would still remain.

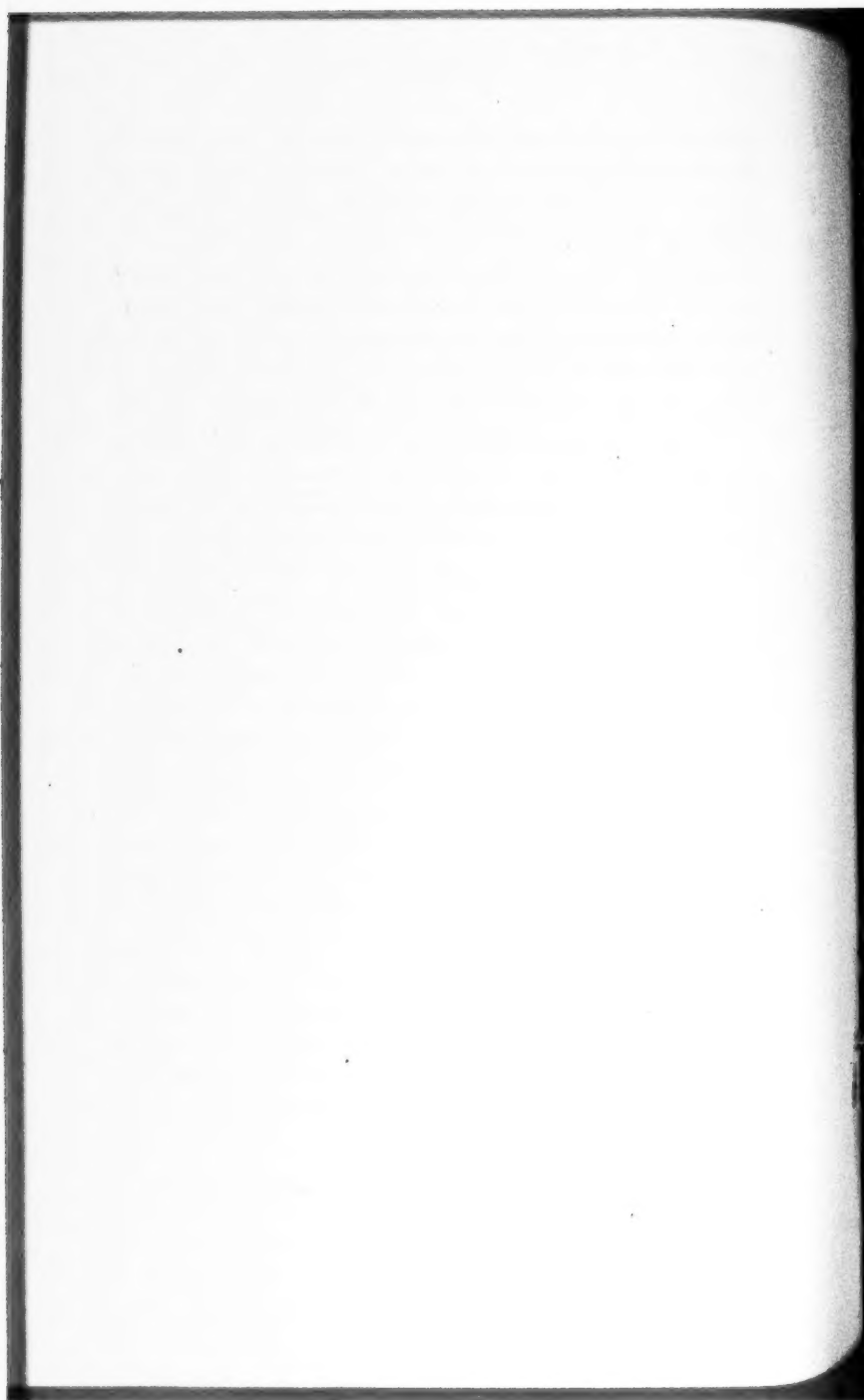
When the attention of this Court is called to the erroneous translation of the word "inscrita," we re-

spectfully submit that it will not hesitate to uphold a grant valid under the laws of Mexico and coming within the description of those provided for in the Gadsden Treaty.

The Act of Congress, under which this proceeding was had, provides that if the grant be confirmed a survey of the same shall be made by the United States; if, therefore, there be any doubt as to the boundaries of the grant, provision is made for the true determination of the boundaries by the Act of Congress under consideration.

Touching the point that the decree of Santa Ana of Nov. 25th, 1853, annulled all the State grants, it is submitted, first, that this decree transcended the powers of Santa Ana. He was the chief executive, and there was nothing in the plan or constitution of Guadajara and Jalisco which invested him with judicial powers; and, indeed, if such powers had been so extended, it would still be far beyond the limits of judicial action to promulgate a general decree taking away private property without a hearing. It would require very clear and explicit language in a constitution to give such a power. But it is contended that as he had assumed to do so, and as the treaty was negotiated with him, the United States is committed to the validity of all of his preceding acts. We do not see upon what reasoning this is based. Besides, such a proposition is inconsistent with the treaty itself. As far as our investigation goes, every grant in the ceded strip of territory was a State grant, and under the contention would have been annulled; yet the treaty contains careful provisions for their protection. Respectfully submitted,

J. H. MEREDITH,
Counsel for Appellants.



Case No. 10,000

Case No. 10,000

Supreme Court of the United States

ROBERT F. WALLIS

THE UNITED STATES ET AL.

ARGUMENT OF SYLVAN & BERKELEY FOR
APPELLANT

Sylvan & Berkeley, Counsel for Appellant, D.C. 10,000

IN THE
Supreme Court of the United States.

ROBERT PERRIN

vs.

THE UNITED STATES ET AL.

**ARGUMENT OF EVANS & MEREDITH FOR
APPELLANT.**

The court below disposed of this, along with a group of similar cases, adversely to the respective claimants.

No written opinion was delivered in this particular case, but the court in orally announcing its decision held that the State of Sonora did not have the power to grant the public lands. It was also contended by counsel for the United States that this *particular* grant was void for the reason, also, that it exceeded four sitios, and that the distances from the center monument to the several boundary monuments, as contended for by the claimant, were much greater than is stated in the original survey upon which the grant was made, thus seeking to call in question the identity of the boundaries as shown by our proofs.

Presuming that these points will be again raised against the grant, we will address ourselves to them.

I.

The State of Sonora had the power to make grants of land.

This Court will take judicial notice of the laws and customs of Mexico on this subject. The courts of a country acquiring territory from another will, without proof, take notice of the laws and customs of the former sovereignty as they existed before the cession in so far as they may affect rights arising in the ceded territory. It is unnecessary, therefore, that the record in this case should contain proofs of such laws and customs.

In considering what was the law prevailing in this territory before its acquisition by the United States, it should be borne in mind that in Mexico the written law was meager and lacking in precision, and that there were no reports of adjudicated cases. Much was left to custom and to the discretion of the higher officers.

It was the custom universally followed for the several States to sell the public lands within their respective limits, and this custom was acquiesced in by all the officers of the Republic, whose duty it would have been to challenge the validity of the sales had they been illegal. Neither the legislative, the judiciary, or the executive ever called them in question, nor was there any attempt made to dispose of the lands in any other way.

We quote an extract from an opinion of Mr. R. C. Hopkins, the whole of which opinion is set forth in a brief of Senator Morgan on file in this cause. Mr. Hopkins was for many years keeper of the Spanish archives, an office created by the United States expressly to preserve and to ex-

plain and translate the Spanish and Mexican archives relating to the vast number of grants comprised within California. His knowledge on such subjects has received praise from the supreme court of California in the reports of that court. The following is the extract :

" From all that can be gathered from the political history of Mexico and from the customs of the country in surveying lands, as shown by the records, it is seen :

" First. That the State of Sonora was, under the law of the 4th of August, 1824, authorized to dispose of the public lands lying within the limits thereof; and,

" Secondly. That the tract of land called San Ygnacio del Babacomari, sold to Ygnacio and Eulalia Elias, was segregated from the public domain by a survey made in accordance with the usual customs of the country, and that the locus of the tract surveyed was much more definitely fixed than were the boundaries of most of the grants made in California about the same time."

The large number of cases now before this Court and the case of *Ainsa vs. U. S.*, already decided, in all of which the grants were made by the State of Sonora or its predecessor, the State of the West, the fact that in not one of them has the central government made the grant goes to show what the custom was.

The central government expressly recognized the ownership and the right to sell the vacant lands on the part of the State. The law of April 6, 1830, provides :

"Article 3. The government shall appoint one or more commissioners whose duty it shall be to visit the colonies of the frontier States; to contract with the legislatures of said States for the purchase by the nation of lands suitable for

the establishment of new colonies of Mexicans and foreigners; to enter into such arrangements as they may deem proper for the security of the Republic with the colonies already established; to watch over the exact compliance of the contracts of new colonists, and to investigate how far the contracts already made have been complied with."

Finding as we do in all these cases, and in the particular case under consideration, that officers of the State, in the name of the State, actually exercised the power of disposing of vacant lands for the public benefit, we are to presume *prima facie* that they lawfully exercised such powers. The burden of showing the contrary is upon those questioning the right. These were public officers; if they were systematically violating their duty, they would, of course, be liable to punishment or removal. Their acts in this behalf were public and notorious. The language used by this Court is pertinent (*United States vs. Arredondo*, 6 Pet., 714):

"There is another source of law in all governments—usage, custom—which is always presumed to have been adopted with the consent of those who may be affected by it. In England, and in the States of this Union which have no written constitution, it is the supreme law; always deemed to have had its origin in an act of a State legislature of competent power to make it valid and binding, or an act of Parliament. * * * The court not only may, but is bound to, notice and respect general customs and usage as the law of the land equally with the written law. * * * Such would be our duty under the act of 1824, though its usages and customs were not expressly named as a part of the laws or ordinances of Spain."

The disposition of these vast tracts of land may be considered historical, and as such may be referred to in argu-

ment, although forming no part of the record. The exterior limits within which the Nogales grant was comprised, which grant, like all the others, was made by the State of Sonora, and which was before this Court in the case of *Ainsa vs. United States*, lay partly in the ceded territory and partly upon the Mexican side of the adjusted boundary. Now, this grant was for sitios or leagues within boundaries containing more than said quantity. Sufficient land to suffice the grant lay within Mexico after the treaty. The Mexican authorities out of this portion laid off and delivered to the grantee the number of sitios stated in the grant, thus fulfilling the grant and recognizing the authority of the State to have made it.

This Court in that case did not refer to these facts; but they were in the record, and may have influenced the Court in rejecting the grant, because otherwise it would have resulted that the grantee would twice have gotten all that was originally intended to be given.

We may reasonably argue that the decision in that case is in our favor upon the authority to make the grant. This, of course, was the first question, and the most important and general, presented in the record. The Court does not base its conclusion upon the point that there was no authority to make the grant, as it would naturally have done had it deemed the objection well taken, but it rather assumed that the grant was valid, but being unlocated, was not one of those provided for in the treaty, and therefore, however valid, not within the jurisdiction of the court of private land claims, the said court being expressly limited in its jurisdiction to the consideration of those grants referred to in the treaty.

II.

The power of the several States of Mexico to dispose of the public lands within their respective borders can be upheld by other reasons than usage and custom—by reasons depending upon the nature of the Mexican government. It resembles our own; was modeled upon it. Its name is the United States of Mexico. The States are sovereign, subject to the powers of the general government.

The right to dispose of public lands is an attribute of sovereignty, and as to such lands within its borders it vests in any one of the States of this Union or of the United States of Mexico, unless there be something in the constitution or laws of the respective countries to the contrary.

In our own Union we find that the original thirteen States sold and issued patents for the public lands, and the titles thereunder have never been questioned; yet there is nothing in the Federal Constitution or in the acts of Congress giving such right. It has been treated as an ordinary act of sovereignty. Much of the lands in New York, Virginia, and other States was disposed of in this manner. The right of the United States to dispose of much of the land in Ohio and other adjoining States arose only upon a grant made by the State of Virginia to the United States.

With respect to the States since admitted into the Union the same result would have taken place were it not the various acts of Congress admitting them contained the express conditions on the subject. The act admitting California may be taken as an instance. Section 3 of the act for the

admission of California, approved September 9, 1850, provides :

"And it is further enacted, That the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned."

We are not, however, left to custom, acquiescence, and recognition, nor to the sovereign attributes of the States on this subject. The act of Congress of Mexico of August 18, 1824, is as follows :

"The sovereign general constituent Congress of the United Mexican States has been pleased to decree :

"1st. The Mexican nation promises to those foreigners who may come to establish themselves in its territory security in their persons and property, provided they subject themselves to the law of the country.

"2d. The objects of this law are those national lands which are neither private property nor belong to any corporation or pueblo, and can therefore be colonized.

"3d. To this end the Congress of the States will form, as soon as possible, the laws and regulations of colonization of their respective demarcation with entire conformity to the constitutive act, the general constitution, and the rules established in this law.

"4th. Those territories comprised within twenty leagues of the boundaries of any foreign nation, or within ten leagues of the seacoast, cannot be colonized without the previous approval of the supreme general executive power.

"5th. If, for the defense or security of the nation, the federal government should find it expedient to make use of

any portion of these lands for the purpose of constructing warehouses, arsenals, or other public edifices, it may do so, with the approbation of the General Congress, or, during its recess with that of the government council.

" 6th. Before the expiration of four years after the publication of this law, no tax or duty (*direcho*) shall be imposed on the entry of the persons of foreigners, who come to establish themselves for the first time in the nation.

" 7th. Previous to the year 1840, the General Congress cannot prohibit the entry of foreigners to colonize, except compelled to do so, with respect to the individuals of some nation, by powerful reasons.

" 8th. The government, without prejudicing the object of this law, will take the precautionary measures which it may consider necessary for the security of the federation, with respect to the foreigners who may come to colonize. In the distribution of lands, Mexican citizens are to be attended to in preference and no distinction shall be made amongst these, except such only as is due to private merit and services rendered to the country or inequality of circumstances, residence in the place to which the lands distributed belong.

" 10th. Military persons who are entitled to lands by the promise made on the 27th day of March, 1821, shall be attended to by the States, on producing the diplomas granted to them to that effect by the supreme executive power.

" 11th. If, by the decrees of capitulation, according to the probabilities of life, the supreme executive should see fit to alienate any portion of land in favor of any military or civil officers of the federation, it may so dispose of the vacant lands of the territories.

" 12th. No one person shall be allowed to obtain the ownership of more than one league square, of five thousand varas (5,000 v.) of irrigable land (*de regadio*) four superficial ones of land dependent on the seasons (*de temporal*) and six superficial ones for the purpose of rearing cattle (*de abrevadero*).

" 13th. The new colonists cannot transfer their possessions in mortmain (*manos muertas*).

" 14th. This law guarantees the contracts which the grantees (*empresarios*) may make with the families which they may bring out at their expense; provided they be not contrary to the laws.

" 15th. No one who, by virtue of this law, shall acquire the ownership of lands, shall retain them if he shall reside out of the territory of the Republic.

" 16th. The government, in conformity with the principles established in this law, will proceed to the colonization of the territories of the Republic."

It will be observed that this act not merely purports to confer, but recognizes as already existing, the power of the States to dispose of vacant lands, and it also shows that it was the policy anxiously fostered by the government to encourage the settlement of vacant lands; and after providing with much detail for the disposal of them by the several States within their respective limits, the act goes on, in the sixteenth section, to provide and declare that the same policy will be pursued by the central government respecting the vacant lands in the territories.

In compliance with the provisions of this law, the State of the West, the predecessor of the State of Sonora, passed the following law :

"The constituent congress of the free, independent and sovereign State of the West has seen fit to decree the following provisional law, for the regulation of the purchase of the lands of the State.

" Fees for the Treasury of the State.

"Art. 1. For each dry sitio that can only serve for pasturing stock, ten dollars.

"Art. 2. For those where well water can be obtained, thirty dollars.

"Art. 3. For those that have spring or river, sixty dollars.

"Art. 4. The values designated in the preceding articles are considered the minimum for sitios, which can in no case be reduced.

" Fees of Surveyors.

"Art 5. For the survey of one sitio, twenty-five dollars.

"Art. 6. For that of two for the same party, thirty-seven dollars four reals.

"Art. 7. For that of three for the same party, fifty dollars.

"Art. 8. For that of four for the same party, sixty-two dollars four reals.

"Art. 9. When the surveyor surveys several sitios, but for different parties, when they do not exceed one for each applicant, he shall charge twenty-five dollars.

"Art. 10. For proclamations and management, up to putting the expediente in condition for final sale, twenty-five dollars.

"Art. 11. Stamped paper shall be at the expense of the parties interested.

" Fees for the Last Public Offer.

"Art. 12. For three proclamations of the last public offer and sale, six dollars.

"Art. 13. For the opinion of the attorney general, three dollars.

"Art. 14. For the drum and proclamations, two dollars.

"Art. 15. The title shall be given gratis.

"Art. 16. Stamped paper is at the expense of the parties in interest, to whom nothing shall be charged for the notices and formal proceedings customary in the last public offer.

" General Provisions.

"Art. 17. The surveyors shall be the alcaldes (mayors) of the towns to whose jurisdiction belong the sitios registered, but with the authority which the treasurer general shall previously delegate to them for the purpose.

"Art. 18. To this end the parties in interest shall present themselves directly to the treasurer general, and he shall make the proper delegation at the end of the application.

"Art. 19. The treasurer, as the immediate head (chief) of all the revenues, shall make the sales (and), give the titles.

"Art. 20. The collector of revenues at the capital shall always be the attorney general.

"Art. 21. To no one who is a new breeder shall more than four sitios be given.

"Art. 22. To those who, from the abundance of their stock, need more, although old breeders, the treasurer general shall grant only so much more as they may need.

"Art. 23. The treasurer shall endeavor by all the means in his power to satisfy himself of the truth, before making the grant which the preceding article prescribes, and the party in interest shall take no part in the steps he may take to secure that end.

"Art. 24. No one shall obtain any sitio for live stock without first proving, in the opinion and to the satisfaction of the attorney general, that he has sufficient to be called a breeder.

"Art. 25. The treasurer, to verify the truth, for the purpose to which the preceding article refers, may order an investigation made, or such secret information taken, as may occur to him.

"Art. 26. For the valuation that should be made of the sitios, on the basis of the value which the law prescribes for them, the surveyor alcaldes shall appoint persons entirely impartial to the interested parties, and they shall, after being informed of their obligations, proceed to discharge their commission, with attention to the more or less fertility of the lands, their location, and other circumstances, in order to give them the value they justly deserve.

"Art. 27. Those who possess sitios, and who, although they have them registered and surveyed, have not obtained the title, shall present themselves to the treasurer general and shall state in writing the cause of that failure, the deputy or judge who surveyed them for them, and the outlays they have made.

"Art. 28. The treasurer shall fix, for this purpose, the time that seems to him proper, and, as soon as he gets all the information together, shall render a report to the government which shall order the proper steps taken, with regard to the rights of the parties interested and the interests of the treasury.

"Art. 29. The treasurer shall give the necessary methods and instructions to his surveyors, that the surveys may be legal and correct.

"Art. 30. It shall be the obligation of owners of sitios to place at their boundary termini the monuments of stone and mortar ordered in repeated laws, as soon as possession thereof is given them; and, if within three months from the day the survey is concluded they do not do so, they shall incur a fine of twenty-five dollars, which the surveyor judge shall exact of them, for the public funds, and besides shall order the monuments constructed at the expense of the parties interested.

"Art. 31. Those who have an order for the registry of sitios under the former practice, are guaranteed under this law.

"Art. 32. The tax for army expenses, the half annata tax,

and the percentage which the former government collected as a general tax, are abolished."

The sale of vacant lands has always been one of the largest sources of revenue in all Spanish-American countries. The Republic of Mexico, in reserving certain sources of revenue and income for the central government, expressly provides that all other revenues belong to the States. The act of the General Congress of Mexico of August 4, 1824, provides as follows:

"8. That of the territories of the federation.

"9. The national property, in which are included those of the inquisition, and the temporalities, and all the properties which belong to the public treasury.

"10. There shall vest in the disposal of the federal government the buildings, offices and lands thereto annexed, which pertain to or have pertained to the general revenue, and those which have been built at the expense of two or more provinces.

"11. The revenues which are not included in the foregoing articles belong to the States."

It will be observed that this act seems to take for granted that these revenues already belong to the States.

We are unable to find any law of the Republic of Mexico asserting ownership by the nation of vacant lands in the States. The constitutive act of 1824 contains no such assertion.

See White's Recopilacion, vol. 1, p. 374.

Nor does the general constitution of 1824. (See p. 387.)

But we do find that the various States claimed such lands by the express language of their constitutions.

Con. Texas and Coahuila, art. 10.

Con. State of Mexico, art. 10.

Con. Nuevo Leon, arts. 2, 3, 4.

Con. Puebla, art. 14.

Con. San Luis Potosi, arts. 2, 3.

Con. Chihuahua, art. 36, secs. 2-7.

Con. Sonora.

When the central system was adopted, in October, 1835, the States were in effect abolished, and we find for the first time any assertion on the part of the nation to dispose of any of the public lands.

Reynolds, pages 195 to 225.

This condition of the Mexican government extended to August 22, 1846, at which time the constitution of 1824 was provisionally re-established, and on May 18, 1847, the act of constitutional reforms was enacted, which reinstated the Mexican Republic as it was under the constitution and constitutive act of 1824. The preamble of this act of constitutional reforms contains the following:

"I. That the States which compose the Mexican Union have recovered the independence and sovereignty that were reserved to them in the constitution for their interior administration.

"II. That said States continue united under the compact that at one time constituted the political mode of being of the United States of Mexico.

"III. That the constitutive act and the federal constitution, sanctioned on the 31st of January and the 4th of October, 1824, form the only political constitution of the Republic."

Reynolds, page 281.

As this act of constitutional reforms contains no provision for the power on the part of the Federal government to dispose of vacant lands within the several States, it is conclusively shown by section 21 that no such power existed. Section 21 is as follows :

"21. The powers of the Union derive all from the constitution, and are limited solely to the exercise of the powers expressly designated in the same, and it shall not be understood that others are granted in the absence of express restriction."

The ownership of the States is recognized in a communication by the Federal government on August 30, 1849, to the governor of the State of Sonora. It is as follows :

"MOST EXCELLENT SIR : The supreme government is informed that on account of the disturbances in Upper California, especially in the gold placers, robbery and murders have increased, and that the hatred of Mexicans, Spaniards, and Chilians has gone so far as to prevent their living there, and that they have been forcibly compelled to re-embark, and further information has been added to this, which indicates that in that country there are no social guarantees.

"This has attracted the attention of His Excellency the President, and he therefore directs me to say to Your Excellency that he expects you to do all that is possible to attract to yourself this population, in the understanding that public lands will be given to the emigrants on credit, and that if that State does not cede them gratuitously, or if the emigrants cannot pay, it will be given them nevertheless, as the

general government obligates itself to indemnify said State in the manner to be determined at the proper time by the General Congress.

"God and Liberty.

"Mexico, August 30th, 1849.

"LACUNZA."

Reynolds, p. 294.

III.

Some objection was made to our proofs of the boundaries of the grant, upon the ground that the distances from the center monuments to the exterior ones appear to be greater than those mentioned in the original grant. To this we reply :

First. That the monuments are natural landmarks, and courses and distances must yield to their location.

Secondly. The circumstance that a larger area than eight sitios was included within the grant was distinctly called to the attention of the treasurer general, but, acting under the powers conferred by article 25, he nevertheless made the grant. Under said provisions he was permitted to make grants of larger area than four sitios to each grantee. His attention was directed to the fact that the boundaries of this grant included more than eight sitios. If the distances mentioned in the original grant should be taken as correct, the area would be just eight sitios, and the circumstance that the area was more than eight sitios could only result from the fact that the distances from the center to the exterior were greater than those mentioned in the rude survey. The question is thus narrowed to the proposition whether the treas-

urer general had the power to grant more than four sitios to each grantee. The exercise of his discretion in this behalf cannot be inquired into.

Thirdly. The whole point in regard to the survey as proved by us is based upon the language used by this Court in the case of *Ainsa vs. The United States*. The Court in that case proceeded upon the assumption that the English version of the treaty was a correct translation of the Spanish. The word "located" is not a correct translation of the word "inscrita." It scarcely needs a dictionary to show that the meaning of the word "inscrita" is "in writing." Of course, both versions of the treaty are original; but this Court in the case of *Arredondo vs. The United States*, in considering the treaty with Spain which effected the Florida purchase, declared that in interpreting that portion of the treaty which related to Spanish grants the Spanish language should prevail with the English in interpreting the treaty.

This Court in the decision in the *Nogales* case did not intimate or suggest that the grant was invalid, but merely said that the jurisdiction of the court of private land claims did not extend to unlocated grants. The sacred obligation of the United States would require the recognition of all grants, located or unlocated, which were valid under the laws of usages and customs of Mexico. There are many congressional grants made by the United States which were unlocated when made, and their validity has never been questioned. So, also, a fair half of all the Mexican grants made within the area of California were unlocated, being grants of limited quantity to be laid off within areas embracing more lands than the quantity granted. Such grants

have been sustained by this Court, and such grants, like the Nogales grant, within the territory comprised within the Gadsden treaty, would likewise have been sustained by this Court were it not for the fact that the Court deemed the court of private land claims to be restricted to such grants as were located.

Now, let us assume, which is indeed the fact, that grants of limited quantity of land to be laid off within larger areas were perfectly valid under the laws of Mexico, would it not be the duty of the United States, regardless of treaty stipulations, to protect such grants under the law of nations? It might well be that Congress in creating the court of private land claims might restrict its jurisdiction; but the sacred obligation on the part of the Government would still remain.

When the attention of this Court is called to the erroneous translation of the word "inscrita," we respectfully submit that it will not hesitate to uphold a grant valid under the laws of Mexico and coming within the description of those provided for in the Gadsden treaty.

The act of Congress under which this proceeding was had provides that if the grant be confirmed a survey of the same shall be made by the United States. If, therefore, there be any doubt as to the boundaries of the grant, provision is made for the true determination of the boundaries by the act of Congress under consideration.

EVANS & MEREDITH,
Attorneys for Appellant.

J. H. Meredith.

Byron Waters for Appellant
Filed Mar 16, 1898

IN FILE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1897.

No. 30

ROBERT FERRIN

Appellant

UNITED STATES vs. AL.

Respondent

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS

Brief of Byron Waters for Appellant.

IN THE
SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM, 1897.

ROBERT PERRIN,

Appellant,

VS.

UNITED STATES ET AL.,

Respondents.

No. 30.

**Appeal from the Court of Private Land
Claims.**

**REPLY BRIEF FOR APPELLANT ROBERT
PERRIN.**

The record of this action discloses an appeal
taken by appellant, Robert Perrin, from a decree

of the Court of Private Land Claims of the United States, by which decree the said Court denied confirmation of that certain Mexican grant of a tract of land situated in the Territory of Arizona known as Babocómari.

The title under which appellant asserts his claim, consists of an auction sale of the premises made by the authorities of the State of Sonora under sanction of the Mexican nation, initiated March 12, 1827, and consummated by the payment of the price of such lands on the 24th day of December, 1828, and by the issuance of title thereto on the 25th day of December, 1832. Such sale was made to the grantors of appellant by virtue of the Mexican law of colonization of August 18, 1824, under which the State of Sonora (State of the West) adopted its scheme of sales of vacant lands by its law of May 20, 1825.

This sale is evidenced by the *testimonio* or copio of the expediente of the grant, wherein is shown by undisputable evidence that the original expediente or matrix of the grant is of record in the proper office of the Mexican nation, and of the

State of Sonora. (See transcript of record, pp. 62 to 80.)

That this grant is genuine is affirmatively proven not only by the production of this record of title, but the Special Agent of the Government, Mr. Flipper, testifies as to the original matrix of the grant being *in writing and duly recorded in the archives of Mexico*. (See transcript of record, p. 49.)

The same Special Agent, in conjunction with Special Agent William M. Tipton, in their joint official report on the condition of the archives or records of the titles to land grants in Arizona, make mention of this grant as follows:

55. SAN IGNACIO DEL BABOCOMARI. (Arizona.)

The original *Expediente* is in the archives. The proceedings begin, March 12, 1827, with petition of Ignacio Elias and Eulalia Elias, together with Rafael Elias, Captain Ignacio Elias and Nepomuceno Felix to the Treasurer General for the land between San Pedro and Tres Alamos. This is a joint petition for the tracts for which titles were issued under the names of San Rafael del Yalle,

San Juan de las Boquillas y Nogales and San Ignacio del Babocómari. The original petition is a part of this *Expediente*, and copies of it are attached to the other two.

The proceedings of survey, appraisement, publications, report of Attorney-General and offers of sale are regular. Payment was made January 8, 1829.

An endorsement by Treasurer-General Mendoza states that final title was issued December 25, 1832.

In the book of *Toma de Razon* for 1833, on page 2 of leaf 11, is an entry of this title, which states that it was not delivered till May 8, 1833.

This delay in the delivery of titles is explained by certificate No. 672, copied herein in case No. 54, and certificate copied in case No. 65.

Official Report on Condition of the Archives of Titles in Arizona, by Will M. Tipton and Henry O. Flipper.

Report of Special Agents Flipper & Tipton, p. 36:

The Solicitor-General, in his brief on behalf of the United States, claims that "This grant is void for the following reasons:

1. "Because the title was not lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land. See brief in *United States v. Coe*, No. 8, and *United States v. Maish et al.*, No. 297.
2. "Because it has not been approved, ratified or confirmed by any official body of the Mexican Republic having authority to bind the nation in that behalf. (See brief in *Ainsa v. United States*, No. 27.)
3. "Because it has been declared invalid by the supreme treaty-making power of the Mexican Republic. (See Santa Ana's decrees, Nov. 25, 1853—Reynolds, 324, et seq. See briefs in *United States v. Coe*, No. 8, and *United States v. Maish et al.*, No. 297.)
4. "Because it had not been located at the date of the treaty of 1853, and consequently falls within the principle announced by this Court in *Ainsa v. United States*, 161 U. S., 208.
5. "Because of uncertainty in the description of the land attempted to be granted."

See Government's Brief, filed Oct 11, 1897, p. 25.

On behalf of appellant it is confidently asserted that none of these propositions can be successfully maintained; but, on the contrary, "according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico, at the City of Guadalupe-Hidalgo, on the second day of February, in the year of our Lord eighteen hundred and forty-eight, and the treaty concluded between the same powers at the City of Mexico on the thirtieth day of December, in the year of our Lord eighteen hundred and fifty-three, and the laws and ordinances of the Government from which it is alleged to have been derived" (Act of Congress, 1891, creating Court of Land Claims) this grant is valid and appellant is entitled to confirmation of his title to the land embraced therein.

Counsel for the Government, in their brief herein, as authority for the first three propositions for which they contend, cite their briefs in other cases pending in this Court, but do not furnish us with copies of the same; hence, owing to the shortness of the time between the service of the

Government's brief and the date of the hearing of this cause, it is impossible to procure all of the briefs in the cases referred to; and as to the propositions so covered, the reply of appellant will consist of such affirmative authority as can be collated in support of appellant's position, and no attempt at an analytical refutation of the various points in detail set forth in those briefs will be made.

As to the fourth and fifth propositions urged by counsel for the Government, appellant will attempt a reply in detail.

FIRST.

THE GRANT IN THIS CASE WAS MADE BY LAWFUL AUTHORITY DERIVED FROM THE FEDERAL LAW OF THE REPUBLIC OF MEXICO, AND FROM STATE AUTHORITY.

The Federal law authorizing this sale to be made by the State consists of a decree of August 18, 1824, respecting colonization.

See copy of this law copied in full in brief of Mr. Merridith for appellant herein, pages 7 to 9.

In pursuance of this law, the Constituent Congress of the State of the West issued its decree No. 30, of the 20th of May, 1825, which shows a complete scheme for the sale of vacant State lands. For copy, see in same brief, pages 9 to 13.

Comparing the record of this grant or sale of the tract San Ignacio del Babocómari with these laws, it appears that there has been a substantial compliance with all the requirements of such laws. If we assume that Federal authority was necessary to enable the State of Sonora to dispose of vacant lands, Section 3 of the law of August 18, 1824, clearly delegates to the State "the framing of laws and regulations of colonization as soon as possible."

The federal colonization law above quoted does not assume that the vacant lands within the *States* belonged to the nation, but by that law it was only assumed that the nation owned the vacant lands in the *Territories*, and hence in Section 16 of the same decree it was provided " * * *

that the Government will proceed to the colonization of the *Territories of the Republic.*"

The limitations imposed upon the States by this law were such only as related to the matters, which, under the Federal Constitution, were of national cognizance, such as the rights of foreign colonists, the protection of the national frontier and sea coast, and the defense of the nation, and in all respects not so limited, the power of the State authorities was untrammelled, and especially was this right of sale to the citizen unlimited.

The constitutive Act of 1824 in no way asserts ownership of the nation of the vacant lands in the States (White's Recopilacion, Vol. 1, p. 374); neither does the General Constitution of 1824 (White's Recopilacion, Vol. 1, p. 387).

Contemporaneously with this failure by the General Government to claim ownership of the vacant lands in the States, we find the States claiming such lands within their respective boundaries by the express language of their respective constitutions.

Con. Texas and Coahuila, Art. 10.

Con. State of Mexico, Art. 10.

Con. Nuevo Leon, Arts. 2, 3, 4.

Con. Puebla, Art. 14.

Con. San Luis Potosi, Arts. 2, 3.

Con. Chihuahua, Art. 36, Secs. 2-7.

Con. Sonora.

All these constitutions were approved by the General Government.

By the Act of the General Congress of Mexico, of date August 4, 1824, recited in this grant, State ownership of public lands was unequivocally admitted. That was a law classifying and defining the revenues and property of the Federation and of the respective States.

While these Federal and State constitutions and laws recognized the ownership of the vacant lands by the States, and both the Federal and State governments were acquiescing in their validity, the Federal Government, on November 21, 1828, desiring to dispose of its lands and populate them, promulgated its "general rules and

regulations for the colonization of the *territories* of the Republic," in express conformity with Art. 11 of the law of August 18, 1824, thus alone doing for the *Territories* what it and the *States* had done to populate the vacant lands in the States.

Later, on April 6, 1830, the General Congress of the Nation again expressly admitted State ownership of the vacant lands, and in the decree of that date, declared as follows:

"Art. 3. The Government shall appoint one or more Commissioners, whose duty it shall be to visit the colonies of the frontier States; to contract with the Legislatures of said States for the purchase by the Nation of lands suitable for the establishment of new colonies of Mexicans and foreigners; to enter into such arrangements as they may deem proper for the security of the republic with the colonies already established; to watch over the exact compliance of the contracts on the entrance of new colonists, and to investigate how far the contracts already made have been complied with.

"Art. 4. The Executive is empowered to take possession of such lands as may be suitable for fortifications and arsenals, and for the new colonies, *indemnifying the State in which such lands are situated by a deduction*

from the debt due by such State to the Federation."

Rockwell, p. 621.

Reynolds, p. 148.

These laws of Mexico, prior in date to this grant constitute the antecedent authority, vouchsafing its validity. Until the adoption of the Central System, in October, 1835, the ownership of the full dominion of the vacant lands by the respective States was recognized by the Federal Government, exercised by the States, and questioned by no power, State or Federal.

This title vested in plaintiff's grantors prior to October, 1835.

This era in Mexican history, extending from 1835 to 1846, is known as the time of the Central Government.

On August 22, 1846, the Constitution of 1824 was provisionally re-established in pursuance of the plan of the Citadel of August 4, 1846; and on May 18, 1847, the Act of Constitutional Reforms was enacted, which placed the Mexican Republic fully under the Constitution and the Constitutive Act of 1824, as modified by this Act of Reforms.

In the preamble of this Act of Reforms we find this characterization of the assumed powers of the Central Government:

I. That the States that compose the Mexican Union have recovered the independence and sovereignty that were reserved to them in the Constitution for their interior administration.

II. That said States continue united under the compact that at one time constituted the political mode of being of the United States of Mexico.

III. That the Constitutive Act and the Federal Constitution, sanctioned on the 31st of January and the 4th of October, 1824, form the only political Constitution of the Republic.

Reynolds, p. 281.

In this Act of Reforms we find no assertion of ownership of the public or vacant lands within the States, and, by its terms, the only restriction placed upon the States as to any matter pertaining to such lands is that exclusive power is given to the General Congress to give *bases for colonization*.

Sec. 11, Act of Reforms.

Reynolds, p. 284.

By Sec. 21 the idea of Federal ownership, or claim of ownership of public lands, is negated:

21. The powers of the Union derive all from the Constitution, and are limited solely to the exercise of the powers expressly designated in the same, and it shall not be understood that others are granted in the absence of express restriction. *Id.*, p. 285.

All of the State constitutions were revived by the Act of Reforms:

The States shall continue to observe their own constitutions, and shall renew their functionaries in accordance therewith.

Act of Reforms, Sec. 30.
Reynolds, p. 287.

State ownership of vacant lands is expressly recognized by the Federal Government by the communication made on the 30th of August, 1849, by the Government to the Governor of the State of Sonora:

Most Excellent Sir: The Supreme Government is informed that, on account of the disturbances in Upper California, especially in the gold placers, robbery and murders have increased, and that the hatred of Mexicans, Spaniards and Chilians has gone so far as to

prevent their living there, and that they have been forcibly compelled to re-embark, and further information has been added to this which indicates that in that country there are no social guarantees.

This has attracted the attention of his Excellency, the President, and he therefore directs me to say to your Excellency that he expects you to do all that is possible to attract to yourself this population, in the understanding that public lands will be given to the emigrants on credit, and that, if that State does not cede them gratuitously or if the emigrants cannot pay, it will be given them, nevertheless, as the General Government obligates itself to indemnify said State in the manner to be determined at the proper time by the General Congress.

God and Liberty. Mexico, August 30th, 1849.

LACUNZA.

Reynolds, p. 294.

Again, in 1851, the Federal Congress, having the judicial power to declare unconstitutional a State law for violation of the Federal Constitution, in declaring a certain colonization law of Sonora invalid, uses this language.

The decree of the Legislature of the State of Sonora of May 6th, 1850, is unconstitu-

tional * * * because it is opposed to Article 11 of the Act of Reforms (Comp. Laws, Mexico, Vol. V, page 275, No. 2982, May 18th, 1847), which says:

"It is the exclusive right of the General Congress to establish bases for colonization, and to enact laws under which the powers of the Union are to perform their constitutional functions:" and to Article 2 of the general law promulgated April 25th, 1835, which says:

"Art 2. In the exercise of the power reserved to the General Congress in Article 7 of said law of August 18th, 1824, the frontier and littoral States are prohibited from alienating their vacant lands for colonization, until the regulations to be observed in carrying it out are established."

Reynolds, 296-298.

This adjudication of unconstitutionality of the State law is not based on the ground that the State did not own or could not dispose of the public lands within its limits, but is founded on the doctrine that as to certain particulars therein stated as to colonization by foreigners, the Federal law had been violated.

Here it is proper to state that in the late work of Mr. Reynolds, "Spanish and Mexican Land Laws," he prefaces this law with the statement that it "annuls decree of the State of Sonora, declaring public lands belong to Sonora." This declaration is likely to mislead, as it might induce one to think that the law was declared unconstitutional for the reason that the State assumed therein to be such owner; but, as already shown, the declaration of unconstitutionality was based on other grounds. In this connection attention is called to the learned opinion of Hon. L. Mendez, President of the Mexican Academy of Legislation and Jurisprudence, in which he makes the point that restrictions against sales, without Federal consent, were not in existence at the date of this grant, which was perfected in 1833, such restrictions not having been imposed until 1835; and he cites this act of the Federal Congress of 1851 as recognizing State ownership of the vacant lands.

The position assumed that each of the Mexican States had dominion of its vacant or public lands is also strengthened by the fact that the Federal

Government not only provided for grants of the public lands of the Territories by the law of November 21, 1828, entitled "Regulations for the Colonization of the Territories," thus recognizing, as is plainly done in the Colonization Law of 1824, a different status and ownership of State and Territorial lands, but the Federal Government also preserved the same discriminating intent to exclude any idea of asserting claim to the vacant lands in the States when it came to provide Government agencies for the administration of Federal property, real and personal, situated in the States. See Law for Colonization of Territories, of 1828, Reynolds, p. 141; also, order of May 10, 1829, relating to the administration of Federal property; this law specifically refers to the "property (bienes) lands (fincas) of the temporalities * * * in which consist the temporalities of the Jesuits and Monastics, of the rural and urban lands belonging to the Inquisition," and therein no reference is made to the *baldios* or public lands, such as are described in Sec. 1 of the Act for the granting of lands in the Territories cited above.

Reynolds, p. 144.

The same is true of the decree of September 2, 1829, and of the regulations under the same, of like date, providing that the nation alone should benefit by the confiscations of the temporalities.

Reynolds, pp. 146, 147.

The law of January 26, 1831, creating the General Department of Revenue (Reynolds, p. 151), and that of May 21, 1831 (Reynolds, pp. 153-161), creating Commissariats and Commissaries and regulations thereunder, expressly limit the Federal agencies to the specific properties as above stated, and hence cannot by construction be held to provide for the sale or administration of the vacant or public lands.

The sum of these considerations is that:

At the time of the initiation, and up to and beyond the date of the final perfecting of the title here in question, the Mexican Government recognized the title of the State of Sonora and its predecessor, the State of the West, to the vacant or public lands within its limits, and its correlative, absolute power of alienation, subject only to the

restrictions of the Act of August 18, 1824, with none of which did this sale conflict; and upon this recognition the State asserted title, passed its law providing for this class of sales, and, upon both such Federal recognition of State title and State authorization and offer of sale, the grantors of claimants made their application to purchase and did purchase the lands claimed, and paid the lawful purchase price therefor in April, 1828, seventy years ago.

The grantees were persons of distinction, actively engaged in the military service of their country, and already intimately concerned in the attempt to populate the section of country embracing the grant and the other contiguous tracts, San Pedro and Babocomari, and to rescue it from the savage Apaches.

Upon making this purchase, the grantees established their herds of horses and cattle upon the granted premises, and from that time to the date of the Gadsden purchase they maintained possession of the same at the cost of continual loss of property and risk of life—a parallel to which is

not furnished by the history of any other part of the territory now comprised within the United States.

All this is matter of history, and though it may be vague as to specific details, yet the sources of information are so many and the facts so notorious that there can be no doubt as to its absolute truth.

The withdrawal of the soldiers of the Spanish in 1821, followed by the exit of the priests in 1827 or 1828, left the country in the unrestrained occupancy of the savage Apache until his ravages were modified, but not for the better, by the influx of the early American adventurer, trapper and gold hunter, who not only brought with them a hatred of the Mexican, but from whose example the Indian learned to shoot a rifle and imbibed a new antipathy for Mexicans. The war between Mexico and the United States came in 1846, resulting in the cession to the latter of the territory north of the Gila River, by the treaty of 1848. During this period Mexico could do nothing toward furnishing protection against the Indians, and soon after

this time complications arose as to the international boundary line, which dispute lasted until December, 1853, resulting in this Government acquiring the strip of country from the Gila to Nogales. It is plain that during all of this time any failure of the grantees to occupy continuously their granted premises was excusable under the plain provisions of the grant, which are that

“they shall not permit the same to be unoccupied for any time whatever, with the understanding that if it shall be totally abandoned for a term of three years consecutively, and there should be any other person who may denounce the same, in this case, the abandonment being clearly shown, it shall be granted anew in favor of the highest bidder, excepting, as is just, *such cases as where the abandonment has been caused by the notorious invasions of the savages*, and in such cases, only during the continuance of such invasions.”

The evidence fails to show that this condition was ever availed in any way by any one seeking to denounce for failure to occupy; and it is certain from the notorious continuance of the invasions of the savages that such denouncement

could not have been made at any time from the date of the grant to the time of the Gadsden Treaty.

Copies of the papers constituting this title, and a similar grant, the "Boquillas," owned by Mrs. Phebe A. Hearst, have been submitted by claimants to eminent counsel residing in the City of Mexico, Hon. Luis Mendez, President of the Mexican Academy of Legislation and Jurisprudence, and his opinion sustaining the validity of this title is intrinsically convincing and fully comprehensive of the laws involved in determining the question. This opinion is also endorsed and approved by Hon. Ygnacio Sepúlveda, now and for ten years past practicing his profession at the City of Mexico, formerly Judge of the Superior Court of the County of Los Angeles, Cal., who is proficient in his knowledge of Mexican law. The following is the opinion:

OPINION.

On the 8th day of May, 1833, the Treasurer-General of the State of Sonora issued title to four sitios of land (four Mexican square

leagues) of the place named "*San Juan de las Boquillas y Nogales*" in favor of Captain Ygnacio Elias Gonzales and Nepomuceno Felix. These four sitios were a part of a denouncement filed in Arizpe on the 12th of March, 1827, asking its adjudication after appraisement and payment of price, as the lands were vacant or public.

In the title deed, of which a copy has been given me, and I presume it is a true copy, are inserted all the proceedings had according to the law in force in the State of Sonora for the survey, appraisements, public auction, calling for bidders, and the sale of the four sitios. It also appears by said title deed that the sum of \$240, in which said sitios were appraised and sold in the year 1828, having been paid to the General Treasury of the State, the Governor of the State ordered, on the 29th of April, 1833, that title should issue, it not having been previously made, for reasons independent of the will of the grantees.

The question is whether this title is legal. The validity of a title to property may refer either to its form or extrinsic formalities, or to its substance or intrinsic formalities. As to the form, there is no doubt that all the formalities were complied with required by the common law in force in all the Republic in the year 1833 for the acquisition of real estate; and it also appears that compli-

ance was had with the special legislation of the State of Sonora with respect to the alienation of vacant or public lands belonging to the State. But the question arises as to whether the lands sold in such a way belonged to the State; and the question refers to the substance of title or its intrinsic formalities, because, if in fact the vacant lands belonged in 1833 to the State, then the sales in question made by the State of Sonora were valid, unless in conflict with some of the general laws of the Republic. On the other hand, if said public lands did not belong to the State, but belonged to the Nation, then any sales made by the State and not confirmed by the Federal Government were essentially null, because a sale is null if made by one who is not the owner. There being nothing said about public or vacant lands either in Constitutive Act of the Mexican Federation of the 31st of January, 1824, or in the Constitution of the 4th of October of the same year, which was its complement, the matter relating to the ownership of said lands was controlled in the year 1833 by the law of the 18th of August, 1824, enacted by the General Constitutive Congress of the Mexican States, during the period that elapsed between the former Constitutive Act of the 31st of January previous and the Constitution of the Republic enacted by same Constitutive Congress on the

4th of October following. Now, the law of the 18th of August, 1824, whose object was to give regulations about colonization, recognized not only the ownership of public lands in the States, but their right to colonize them, subjecting them only to certain regulations as to colonization. Hence Art. 3rd of said law provided that "that the Congresses of the different States should establish, within the shortest time, the laws or regulations of colonization within their respective territories, in accord with the Constitutive Act, General Constitution and the rules established in the same law." This clearly recognized in the States the ownership of the public lands: first, because, according to Art. 2nd of said law, its object was the colonization of said lands; second, because it could not be deduced that the States would be granted the power to legislate on the colonization of lands belonging to the whole Nation.

The interpretation given by the States to the laws, that the public lands belonged to them, is confirmed by several subsequent decrees of the Federal Congress; and we may cite amongst others the law of the 6th of April, 1830, and that of the 25th of April, 1835; but we may especially refer to the law of the Federal Congress, enacted on the 14th of May, 1851, because it particularly applies to the State of Sonora.

The reason why this law was enacted is the following: On the 6th of May, 1850, the Legislature of the State of Sonora passed a decree declaring, subject to colonization, all the vacant and public lands lying on its frontiers not belonging to any individual, corporation or pueblo.

The Federal Congress, by the law of the 14th of May, 1851, declared unconstitutional the above enactment of the State of Sonora, for two reasons: first, because it conflicted with Art. 11th of the amendments to the Constitution of 1824, adopted on the 18th of May, 1847, which provided that it was of the exclusive power of the Federal Congress to enact bases for colonization, and the laws by which the Federal power was to exercise its constitutional functions; and, second, because it was in conflict with Art. 2nd of the general law enacted on the 25th of April, 1835, which provides: "Art. 2nd. By virtue of the power reserved by the General Congress in Art. 7th of the said law of the 18th of August, 1824, the States bordering on the frontier or the coast are prohibited from alienating *their vacant lands* to colonize them until the regulations to be observed for this purpose are established." It is thus seen that the Federal Congress, in 1851, considered still in force the law of the 25th of April, 1835, that recognized the ownership of the States of their vacant lands, but pro-

hibited the States on the frontier and on the coast from alienating to colonize them until the regulations for that purpose were established. Art. 2nd, referred to by the law of the 25th of April, 1835, was enacted by virtue of the power reserved to the General Congress in Art. 7th of the law of the 18th of August, 1824, so as to limit the entry of foreigners to colonize, when imperative circumstances might require it in regard to individuals of any nation.

From the above it results: 1st, that in the year 1833 the State of Sonora could legally sell to Captain Don Ignacio Elias Gonzales and Nepomuceno Felix the four sitios for the raising of horses and cattle in the *San Juan de las Boquillas y Nogales*, within the jurisdiction of the Presidio of Santa Cruz, because the Federal Government itself recognized the ownership of the State of the vacant lands and the right to alienate them; 2nd, because the *limitations* established in the decree of the 18th of August, 1824, referred only to *foreigners and not to Mexicans*, to which nationality the grantees in this case belonged; and because the decree of the 25th of April, 1835, suspending the power of the frontier States to alienate had *not then been issued*.

I therefore deem the title above stated to be perfectly legal, and *did not require for its validity the confirmation of the Mexican Fed-*

eral Government. I entertain the same opinion with regard to the title of the Barbacomori Ranch acquired about the same time, and with regard to any other vacant lands whose titles are on the same footing with this case.

LUIS MENDEZ,
Consulting Attorney and President of
Mexican Academy of Legislation and
Jurisprudence.

After a thorough examination of the law bearing on the above case, I concur fully in the opinion rendered by Hon. Luis Mendez.

Y. SEPULVEDA,
Atty. at Law.

Mexico, Nov. 19, 1895.

SECOND POINT.

The answer hereinbefore given to the first proposition made by the Government, also answers the second proposition, in that no approval, ratification or confirmation of this grant was required at the hands of the Mexican Republic, because of such prior authority. It is only an authorized act which requires subsequent ratification.

THIRD POINT.

The Government next contends that this grant was void because it has been declared invalid by the supreme treaty-making power of the Mexican Republic. Reference is made under this head to the decree of Santa Ana, of November 25th, 1853.

The decree of Santa Ana is a nullity:

1. Because at that time the Government of Mexico was that of a constitutional Republic, under whose organic law the powers of the Government were divided into Executive, Legislative and Judicial. Santa Ana was its President, and as such had only the power to execute the laws, and had no power to make a decree confiscating private property or annulling titles.

2. Because the Republic of Mexico was then being treated with by its Government relative to the acquisition of the territory embraced within the Gadsden purchase, and within thirty-five days after the date of the pretended decree of Santa Ana, this Government consummated by treaty, its negotiations acquiring such territory, and by the terms of the treaty recognized the constitutional

entity of the Republic of Mexico. This Government is bound to recognize the limitations of Santa Ana's power under the Mexican constitution.

Governing this question of the power of Santa Ana, either to make the decree annulling the grants, or to make a treaty, the following provisions of the Constitution of Mexico then in force are cited.

"Constitution of 1824 of the Mexican Republic.

Article 6.

"The Supreme power of the Federation as to its exercise, is divided into the Legislative, Executive and Judicial powers.

* * * * *

"ARTICLE 50.

"The exclusive powers possessed by the General Congress are the following, viz:
* * * (Section 13), to approve treaties of peace, alliance, friendship, confederation, armed neutrality, and all others which the President of the United States may enter into with foreign powers.

“ARTICLE 110.

“The attributes of the President are the following: * * * (Section 14) To direct diplomatic negotiations, and make treaties of peace, friendship, alliance, truce, confederation, armed neutrality, commerce and all other kinds, but in order to give or withhold ratification of the same, the *approbation of the General Congress is necessary.*

“ARTICLE 112.

“The restrictions of the President’s powers are the following: * * * (Section 3) The President cannot occupy the property of any individual or corporation, nor disturb them in their possession or use of the same; and, if in any case it should be necessary for some object of acknowledged utility to take the property of an individual or a corporation, it cannot be done without previous approbation of the *Senate*, and in the recess the Council of the Government, always indemnifying the party the value fixed by appraisers chosen by himself and the Government.

“ARTICLE 147.

“The confiscation of goods is forever abolished.

“ARTICLE 148.

“All judgments by commission and retro-active laws are forever prohibited.

“ARTICLE 171.

“Those articles of this Constitution and of the constitutive act which establish the liberty and independence of the Mexican Nation, its religion, form of Government, liberty of the press and the division of the Supreme powers of the Union and of the States can never be changed.

“Const. of Mexico, 1824-1847. White's Recopilacion of the Laws of Spain and the Indies and of Mexico and Texas.

“The particular department of the Government which shall be able to enter into a binding treaty, and the particular steps necessary to be taken in order to render it obligatory, must depend entirely upon the internal constitution or fundamental law of each State; and all other Nations are bound to take notice of this Constitution in that respect, and of the powers which it confers upon the Government.* * * The particular Constitution of each State, or its fundamental law, governs in this matter, and determines to which of the powers, whose whole forms the Government,

belongs the right of making treaties in the name of the State."

Pomeroy's International Law, pp. 326, 327.

3. Because the treaty by its express terms stated what grants could be recognized as obligatory, and by necessary implication negatives the validity of the decree of Santa Ana (See Treaty, Art. VI., 10 U. S. Stats. at L., 1035).

4. Because Santa Ana, even if he did on Nov. 25, 1853, assume to be a dictator, and assumed as such to confiscate the property of the citizen or to annul titles, his decree never received vitality, since Santa Ana's assumption of dictatorial power was never carried into execution by him, but the force of such decree remained futile owing to the fact that his assumption of dictatorial power was repudiated and overthrown by the Mexican sovereignty.

FOURTH.

It is next claimed on behalf of the Government that this grant is void because it had not been *located* at the date of the Treaty of 1853, and con-

sequently falls within the principle announced by this Court in *Ainsa v. U. S.*, 161 U. S., 208.

NOTWITHSTANDING WHAT HAS BEEN SAID BY THIS COURT IN THE CASE LAST CITED, WE RESPECTFULLY INSIST THAT THE ELEMENT OF "LOCATION" IS NOT ONE REQUIRED BY THE TREATY OF 1853, NOR BY THE ACT OF CONGRESS OF 1891 PROVIDING FOR THE CONFIRMATION OF THESE GRANTS. True, the English copy of the treaty as published in the tenth volume of the Statutes at Large, and the opinion of this Court in the case of *Ainsa v. U. S.*, above cited, would indicate that no grants can be regarded as obligatory, unless the same shall have been "located" and duly recorded in the archives of Mexico; but the word "located," as it occurs in the English copy of the treaty, Section VI, is a mistranslation, and not warranted by the Spanish text of the treaty, as can be shown to a demonstration.

The expressions used by this Court in the *Ainsa* case controlling this point are as follows:

"Article VI of the Gadsen Treaty (Dec. 30, 1853), is as follows: 'No grants of land within the territory ceded by the first article of this treaty, bearing date subsequent to the day—twenty-fifth of September—when the minister and subscriber to this treaty on the part of the United States proposed to the Government of Mexico to terminate the question of boundary will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico' (p. 221). * * * 'By the treaty no grant could be considered obligatory which had not theretofore been located' (p. 223). * * *

"Assuming that this was a valid grant made by the proper officers, and duly recorded, we concur with the Court below that it was a grant of a specific quantity of land and not of the entire eighteen leagues contained within the exterior boundaries, and, not having been located at the date of the treaty, could not be confirmed" (p. 224). * *

"In any view no reason is perceived for disregarding the construction thus put upon the titulo, and as the land purchased was not located at the date of the cession, the United States were not bound by the treaty to recog-

nize the claim as of right, nor could the Court of Private Land Claims confirm it" (p. 234).

Shortly after the publication of the decision of the Supreme Court of the United States in the Ainsa case, counsel for these plaintiffs sought the opinion upon the questions involved, of eminent authority upon Mexican law, and herewith presents the joint opinion of Hon. Y. Sepulveda, Secretary of Legation at Mexico, and of Hon. Luis Mendez, President of the Mexican Academy of Legislation and Jurisprudence, as follows:

OPINION.

IN THE MATTER OF THE TITLE TO
FOUR SITIOS IN SAN JUAN DE }
LAS BOUQUILLAS Y NOGALES. }

On the 18th of November, 1895, we gave an opinion as to the legality of this title issued on the 8th of May, 1833, by General Treasurer of the State of Sonora in favor of Captain Ygnacio Elias Gonzalez and Nepomuceno de Felix. The main question upon which we rendered an opinion then was the legality of the title that was issued by the State authorities of Sonora, and not by the Federal Government.

We were of opinion that at the time said title was issued, the title to the vacant public lands was vested in the States, and that these could legislate and dispose of them according to their own local laws, and hence that the title issued was legal and valid.

Now it has again been submitted to us in view of a decision rendered by the Supreme Court of the United States on the 2d of March, 1896 (161 U. S., 208), in the case of Santiago Ainsa, Administrator, with the will annexed, of Frank Ely, deceased, et al., appellants, vs. The United States, Number 429, Appeal from the Court of Private Land Claims. The question propounded is whether or no judicial possession is required to be given after issuance of title to perfect and render valid the rights granted to Ygnacio Elias Gonzalez and Nepomuceno Felix.

We have carefully read the decision of the Supreme Court of the United States above referred to. We would not criticise the opinion of a tribunal which justly deserves the respect which the ability of its members exacts, though we may differ in the judicial conclusions reached. The main point is, that according to Article 6 of the Gadsden Treaty of December 30, 1853, by which the Mexican Government, to settle the question of boundary between the United States and Mexico, ceded the territory within which lie the seven and

a half sitios affected by the decision of the Supreme Court, the United States are not obliged to recognize grants made previous to the 25th of September, 1853, WHICH HAVE NOT BEEN LOCATED AND DULY RECORDED IN THE ARCHIVES OF MEXICO. Taking the English text of the treaty, it is deduced that all grants of land which had not been LOCATED, which, in the opinion of the Supreme Court, consists in taking judicial possession, citing adjoining owners and designating the boundaries, are not grants which, according to the treaty, ought to be considered valid or be recognized, although it be established that the grant was given by competent authority and was duly inscribed and recorded in the archives of Mexico. But, referring to the comparison of the English and Spanish texts of the treaty (10 Stat., 1031, 1035), we find a difference between them. The Spanish text says that "no se consideraran como obligatorias ningunas concesiones hechas con anterioridad que no hayan sido INSCRITAS y debidamente registradas en los archivos de México." In the English text the word LOCATED appears as the corresponding word INSCRITAS, in Spanish. These words, however, have an entirely different meaning, and give different ideas. The word LOCATED, from locate, according to Webster, is: "To select or de-

termine the bounds or place of, as to locate a tract of land," and location in its judicial acceptation is: "The marking out of the "boundaries or identifying the place or site "of a piece of land according to the description given in an entry, plan, map and the "like." The Century Dictionary defines TO LOCATE—"To fix the place of; to determine "the situation or limits of; as, TO LOCATE "the site of a building; TO LOCATE a tract "of public land by surveying it and defining "its boundaries; TO LOCATE a land claim; "TO LOCATE (lay out) the line of a rail- "road." The word INSCRITAS, in the Spanish text of the treaty, from INSCRIBIR, signifies, speaking of titles by grant, to enter them in writing in some register or book of registers, and, in the legal Mexican expression, the words, REGISTRO E INSCRIPCION, REGISTRADO, é INSCRITO, are used indifferently one for the other, to signify the same idea, that is TO MAKE a note or make a compendium in a book called "Register Book, Record Book" (Libro de Registro ó de Incripciones) of the contents of a document. Hence these expressions we find used indistinctly in the Mexican Civil Code; for instance, in Title XXIII of the BOOK III of the Civil Code, which treats of the Public Register or Books of Record, where note is to be taken of certain titles or documents mainly

relating to real estate, we read: Art. 3188. "The REGISTRY (record) shall be made in the office where the property mentioned is, according to its situation." Art. 3189. "If the property should be situated in different districts, the registry shall be made in all of them." Art. 3190. "*Ninguna inscripción* puede hacerse si no consta que el que la pretende es actualmente dueño de los bienes, tiene derecho para exigir el REGISTRO ó proceda con poder legal del propietario" (No INSCRIPTION shall be made if it does not appear that the one desiring it to be made is the present owner of the property, having a right to demand its REGISTRY, or acts with a legal power of the owner). Art. 3191. "Solo pueden INSCRIBIRSE los títulos que constan de escrituras públicas, y las sentencias y providencias judiciales certificadas legalmente" (There can only be INSCRIBED the titles that appear in public writings and the judicial sentences and orders legally certified). Art. 3219. "Las INSCRIPCIONES no se extinguen en cuanto á tercero sino por su cancelación, ó por el REGISTRO de la transmisión del dominio ó derecho real INSCRITO á otra persona" (The inscriptions are not extinguished with regard to third persons, unless they be cancelled, or by the registry of the transfer of ownership or right of realty INSCRIBED to

another person). Examples might be multiplied to show that in the language of the Mexican laws now as before, and at all times, the INSCRIPTION of a grant or title to land, as well as that of any other instruments or documents, is nothing more than taking note of it or having it entered in a public REGISTER or Record.

Undoubtedly the decision of the Supreme Court of the United States was based exclusively on the English text, and no notice was at all taken of the difference which we mention as existing between the English and Spanish text. Now, when a treaty is made in two languages, and one expresses a different idea from the other, which text ought to prevail? There are some international writers who are of the opinion that as both texts are considered originals neither has preference, and only a diplomatic convention can settle the matter. This is the opinion of Martens, in his *Compendium of Derecho de Gentes*, Book VI, p. 179. There are others, as Penheyro-Ferreira, Annotator of Martens, who are of the opinion that one text ought to be taken as the original and the other as an authentic translation. According to this opinion, the original text prevails, and the translation ought to be corrected.

In our opinion, if in fact it appears that the negotiations were had in one of the two

languages, and that the first text discussed was written in that language, the opinion of Penheyro-Ferreira is the most rational and most in conformity with the principles governing contracts of private rights. The presumption is that the contract was entered into in the language of the country where it was made, especially so when the subject matter is public instruments, which in most countries, Mexico among them, can only be executed in the official language, which is the national.

The treaty of 1853, having been made in Mexico, was probably negotiated in Spanish, the text in this language having served for its discussion.

Be this as it may, it is nevertheless clear that the main reasoning of the decision of the Supreme Court of the United States, that we are considering, is subject to a serious objection for the causes stated.

The Supreme Court having based its decision on the fact that because of the words of the treaty the United States are not obliged to recognize as owners the grantees of lands which at the date of the treaty had not been *located*, was compelled to enter into the examination of the acts which constitute such location, and the Court, in this respect, seems to incline to the doctrine of judicial possession preceded by survey and marking out of the

boundaries of the property, made by previous citation of the adjoining owners in their presence and the titles exhibited.

The examination of this point requires us to cite the legal rules, which, at the date of the treaty, controlled the contract of sale, because really a sale took place in land grants, except, when the concession was gratuitous or in the nature of a donation. Every concession in which the party acquiring the land paid any price for it, was, without a question a real sale. Although the contract of sale was perfected by the agreement of the seller to transfer the ownership of the thing to the purchaser for a certain price in money that this bound himself to pay, the dominion of the thing sold did not pass to the purchaser until it was delivered. That is to say, there was a difference between the PERFECT contract and the consummated contract. The principle of the Roman law was followed: "NON NUDA CONVENTIONE SED TRADITIONE DOMINIUM ACQUIRI." But the transfer, or delivery, of the thing sold might be a material delivery or a symbolical one. The first consisted in the seller placing the purchaser in fact, or materially, in possession of the thing; the second was effected by the mere delivery of the titles to the property. And on this symbolical delivery there is in the old Spanish codes, which were in force in

1853, a most interesting law, which we will copy. Law VIII, Title 30, Partida 3d (Code of the Siete Partidas), says: "DANDO AL-
 "GUN OME HERADAMIENTO O OTRA
 "COSA QUALQUIER APODERANDOLE
 "DE LAS CARTAS POR QUE LA EL ONO,
 "O FAZIENDO OTRA DE NUEVO, E
 "DANDOGELA, GANA LA POSSESSION
 "MAGUER NON LE APODERE DE LA
 "COSA DADA CORPORALMENTE" (If any
 gives a hereditament or any other thing by
 giving the title papers by which he holds it or
 making a new one and giving it, he acquires
 the greatest possession, although he does not
 give corporal possession). If no corporal, or
 material, possession was required of the
 thing sold to transfer dominion, much less
 was it required, as it is not required at pres-
 ent, that the delivery should be judicial by
 the attendance of any authority of the judi-
 cial order. It might, of course, be stipulated
 in the contract that the delivery of the thing
 should be made judicially, be it after the sur-
 vey proceedings to determine, with the cita-
 tion of adjoining owners, the true boundaries
 of the thing, or without such proceedings.

When such stipulation existed the judicial possession was the effect of the contract, but not a requirement of the law; it was not an essential requisite to transfer the ownership. Even without a stipulation, the proprietor of

land could then, and can now, ask for a judicial survey, and this is done whenever any controversy, or disputes, arise between adjoining owners. What we mean is that for the transmission of the thing sold, so that the party acquiring it be held as the owner and possessor, it has not been a requirement of law that judicial possession be given, either by the legislation in this country before the treaty of 1853 nor afterwards, nor at any time. This being the case, when the Government transferred the dominion of national or vacant land to an individual or company it was not necessary, before 1853, that the party acquiring should take judicial possession of the land so as to vest in him the ownership. It was sufficient that the title should be issued to him and the title should be registered (recorded) or inscribed in the special registers that were for the purpose kept. It is the same at present. It was not necessary to locate the land before the issuance of title. The petition for the purchase or sale being made and the land not being surveyed or located, if it was for a quantity included within a larger area of national land, or if it was uncertain whether the land asked for was all Government land, or if the measurement asked was its real extent, in short, it being the first requisite of a sale that the thing sold be known, and that it belongs to the one who

sells it, the locating of the land asked was made by expert surveyors, appointed by the judicial or administrative authority, and not only proceeded to locate, but to the determination of its value. After these proceedings, which determined the locality of the land, its extension and value, the advertisement of sales was had, with the double purpose of having bidders present who might offer a better price, and that those who pretended to be private owners of the land might exercise their rights and oppose the sale. If no better price was offered and there was no opposition, the land was adjudged to the petitioner at the price of appraisement, and title was issued to him, and he thereby became the owner of the land. Then the title was registered, as we have said.

Such were the proceedings in the matter, and they are the same to-day, with the only difference that proceedings for the survey of the land have been somewhat perfected.

Some of the laws cited by the Supreme Court of the United States prescribed that the party acquiring the land should be compelled to construct permanent monuments to mark the boundaries, within a certain time, subject to a fine and having boundaries and monuments established at his cost. These provisions, however, indicate: 1st, that the land had already been located and measured,

only that in doing it provisional monuments had been placed; and 2d, that the tradition of the property to the grantee, or party acquiring it, was recognized by the simple delivery of the title and its registry. The omission to erect permanent monuments did not carry the forfeiture of the property, but a fine was only imposed, and the establishing of the permanent monuments by the agents of the authorities at the cost of the party acquiring the land.

If we examine the titles that were then issued it will be clearly seen by themselves conferred a perfect right of possession and property in the land granted or alienated, and that the obligation to establish permanent monuments, if not complied with, did not forfeit nor diminish at all that right of possession and property. In fact the land was located, surveyed and appraised before the issuance of title, and not only this, but before the issuance, publications of public sale of the land thus located, measured and appraised were had.

This was especially done in the matter of the title of the four sitios situated in the Puerto de San Juan de las Boquillas y Nogales in the Presidio de Santa Cruz, which are before us.

The situation, or localization, of the land sold having been determined by the proceed-

ings had previous to the issuance of title, and the price having been paid, the essential elements of a sale exist, which consists in the transmission of the dominion of the thing with the consent of the seller and the purchaser as to the thing sold and the price and the issuance of the title and its registry.

It may be well to observe in the matter of national lands, that the law which required the registry of the title of the grant was in anticipation of what later became a general rule for the transmission of real estate of any kind. At present it is not enough to transmit ownership of real estate that the seller should execute a title deed to the purchaser, but the law requires that this title deed should be inscribed and registered in the Public Register of property. From the moment that the inscription is made the property is irrevocably transferred, and no one but the owner inscribed can be held as the owner of the land. But while the inscription is not made, if the owner sells or mortgages the thing to another person, and this one inscribes, or registers, his title, the first purchaser has to recognize the right of the one who bought and first registered, and can only bring suit against the one who sold it for indemnization. The law, however, to avoid fraudulent transactions, fixes a time after the execution of the deed within which no other conveyance can

be legally registered; but the time fixed having lapsed the negligence of the purchaser will occasion the loss of his right to inscribe his title, if another purchaser registers before.

These are rules of the Mexican law; and we reiterate, as a conclusion, that no law, ancient or modern, required ever, in this Republic of Mexico, judicial possession for the acquisition of real estate, and that the title to the lands that we have under consideration cannot be invalidated according to Mexican law for the want of judicial possession.

LUIS MENDEZ.

Y. SEPULVEDA.

City of Mexico, July, 1897.

To them belongs the credit of first calling attention to the patent and most important contradiction which exists between the English and Spanish copies of the treaty mentioned, in a particular which, under rules of construction of similar treaties, will do away with the element of "location" so held in the Ainsa case as a necessary requisite to confirmation of these grants.

Both the English and Spanish copies of this treaty are originals.

U. S. Statutes at Large, Vol. 10, p. 1031.

The contradiction or mistranslation occurs in article VI of the treaty: Id., p. 1035, as follows:

From the English

Or will any grants made previously be respected or be considered as obligatory which have not been *located* and duly recorded in the archives of Mexico.

From the Spanish.

Ni tampoco se respetarán, ni considerarán como obligatorias ningunas concesiones hechas con anterioridad que no hayan sido *inscritas* y debidamente registradas en los archivos de Mexico.

It is apparent that the word "located" should have been omitted from the English copy, and the word "inscribed" used instead.

Dominguez Diccionario Nacional, *inscrito*,
ta. part. pas. irr. de Inscribir.

On the other hand, if the English word "located" expressed the intention of the contracting parties, the corresponding word in the Spanish version would have been "colocado."

Dominguez Diccionario Nacional, "colocado," da. part. pas. de Colocar o colocarse.

Spanish and English Dictionary, Velazquez, "to locate," p. 314; "colocar," p. 162.

Both versions being originals, the question naturally arises, which shall prevail?

Fortunately, the Supreme Court of the United States has decided the identical point, in the case of *U. S. vs. Arredondo*, 6 Peters, p. 740, where, as here, a treaty of cession of territory was to be construed. The Court there said:

“The King of Spain was the grantor, the treaty was his deed, the exception was made by him, and its nature and effect depended on his intention, expressed by his words, in reference to the thing granted, and the thing reserved and excepted in and by the grant. The Spanish version was in his words, and expressed his intention, and, though the American version showed the intention of this Government to be different, we cannot adopt it as the rule by which to decide what was granted, what excepted and what reserved; the rules of law are too clear to be mistaken and too imperative to be disregarded by this Court. We must be governed by the clearly expressed and manifest intention of the grantor, and not the grantee, in private *a fortiori*, in public grants.”

Special attention is also invited to that part of the opinion of Messrs. Sepulveda and Mendez in

which they treat of the doctrine of juridical possession under the laws of Mexico. They make it plain that in cases like this, of a sale for a price paid, where a written record title is given, no juridical possession is required by Mexican law. In fact the only cases cited by the court in the Ainsa case upon the matter of juridical possession were of instances where the *grants themselves* stipulated that such possession should be given.

Furthermore, I do not read the Ainsa case as deciding, independently of the assumed treaty requirement of location of grants, that juridical possession is essential to a valid Mexican grant.

In the California grant cases, many of which, from the leading case of Fremont down, were before the Supreme Court of the United States, no such rule of law as distinguished from contract stipulation was ever laid down; notwithstanding those grants were gifts, upon onerous conditions, and not sales for a price paid as we have in the Arizona grants.

Fremont vs. U. S., 17 How., 557.

The Act of 1891, admitting these grants to adjudication, provides that grants *perfect* or *imperfect* may be confirmed.

The closest scrutiny of the Act does not disclose any provision at all based on the idea of "location" or "juridical possession" mentioned in the English version of the treaty with Mexico and in the Ainsa case,—but, on the other hand, the whole scheme of judicature specified in the Act, both in its declaration of the cases in which, and the laws by which confirmation shall be made, as well as the negative limitations stated, by the terms of which confirmation shall be withheld or restricted, clearly indicate a desire on the part of this Government that these titles shall be tested by the same rules of law as were the grants in California.

Act of March 3, 1891, Sec. 7.

Id., Sec. 13, Subdiv. 1st-7th.

This leads us to the conclusion that the decisions of this Court rendered in the California cases involving Mexican grants are applicable

and authority upon similar questions arising in these cases.

Both the treaty and the Act of Congress relative to these grants being silent as to the necessity of "location" or "juridical possession," we have abundant authority in the adjudged cases in this Court that there was no such element necessary to a valid grant under Mexican law in the absence of a *stipulation in the grant* requiring the same.

"The right to so much land, to be afterwards laid off by official authority, in the territory described, passed from the Government to him by the execution of the instrument granting it."

Fremont vs. U. S., 17 How., 558.

See, also,

Hornsby vs. United States, 10 Wall., 224-232.

Ainsa vs. United States, 161 U. S., 221-223.

FIFTH

This grant is claimed by the Government to be void

“because of the uncertainty in the description of the land attempted to be granted.”

Govt. Brief of Oct. 11, 1897, p. 26.

“**Elements of Description—In General.** The elements of description are the natural and artificial monuments, the courses and distances, and the quantity of the land. A full description should contain an enumeration of all of these elements.”

“The relative value of the various elements is in the order above stated, on the ground that that which is most material and certain should prevail; but this rule is not inflexible.”

“When the calls are false, mistaken or repugnant.—It does not apply when the calls for monuments are false, mistaken, or repugnant, and when the rejection of a call for a monument would reconcile other parts of the description and leave enough to identify the land.”

“All the elements need not be employed, nor is it absolutely necessary to use all the elements, or to describe land by its abutments. It may be designated by a particular name, as ‘Mount Vernon,’ ‘White Acre,’ or such like.”

Vol. 4, Am. & Eng. Enc. of Law, 2nd Edition, pp. 760, 761.

The grant or patent contained in the "titulo" is of a specific tract of land described as follows:

"Eight sitios of land for the breeding of horned cattle and horses, embraced in the place named San Ignacio del Babocomari, situate in the jurisdiction of the Presidio of Santa Cruz," * * * "with all their entrances, exits, uses, customs, servitudes, woods, pastures, waters, watering-places, and all other things thereto pertaining. * * *"

See Record, p. 78.

Then follows a record of an actual survey by metes and bounds of the tract granted.

Particular attention is called to the fact that this tract is sufficiently described by the name of the place, "St. Ignacio del Babocomari," and the area eight leagues, situated within the Presidio of Santa Cruz, and would be a good grant and sufficiently designative of its location under the authorities cited in the point last made. But there is no defect in the survey which at all makes it necessary for us to resort to the position above stated, however safe we might be in doing so. The survey,—the record of which is in the

testimonio, as shown from pages 73 to 76 of the record—discloses ample data from which to locate every boundary of the grant as surveyed by the Mexican authorities. The location of all the natural monuments ~~are~~^{is} proven.

Testimony, Roskruge.

It requires but a reading of the argument made by counsel for the Government upon this point to determine that the criticism of this survey, when tested by the established rules of construction of descriptions in deeds or grants, is unwarranted by the facts. It is apparent, as counsel for the Government admits (see brief, p. 31), that the Mexican surveyor attempted in his notes of survey to read *both ends of the needle in noting the courses run by him*. In some instances the direction of *one* end of the needle was recited in a manner impossible to be understood, while the *other* end of the needle was stated to *point a course both possible and intelligible when construed with other parts of the notes*. In each of these instances the expert witness, Mr. Flipper, in his testimony, and

counsel for the Government in his argument, both violate every rule of construction by giving to such misnoted calls controlling weight to render the description uncertain, instead of giving the intelligible calls weight rendering it certain.

The case of *Higueras vs. U. S.*, 5th of Wall., p. 834, is found to be very similar to the one at bar in the particular in question. The Court was there construing a decree of confirmation of a Mexican Grant situated in California and used this language:

"Most, or all, of the courses given in the decree are undoubtedly erroneous; but there is very little difficulty in ascertaining the cause of the error, and still less in the conclusion that the errors in that behalf ought not to control the questions under consideration, not be suffered to affect or prejudice the rights of either party. Unlike what is usually to be seen in Mexican expedientes, it appears in this case that two of the disenos or maps of the tract exhibited in the expedientes contain on their face a delineation, as on a card, of the four cardinal and other principal points of the compass. Referring to the delineation, it will be seen that *north*, as there

delineated, is in the place of *northwest*, and that the corresponding error occurs throughout the delineation. Make the correction suggested, and the representation of the points of compass would be substantially correct in all respects; or, in other words, read north for northwest and northwest for north, and there would be little or no incongruity between the monuments given in the decree of the courses as therein laid down."

This doctrine is affirmed in the case of *Ayers vs. Watson*, 137 U. S., 604.

Disregarding such of the readings of the notes of survey as state unintelligible courses, we find ample data, not only by natural monuments, but by courses and distances given to describe the land granted.

As to the *west half* of the tract lying between the well known and undisputed natural monuments, the Cienega (spring) of Babocomari and the Hot Springs, there can be no candid claim made that the grant is uncertain as to description.

The plan of this survey is that established by the law of Spain and Mexico,—of measuring interior lines from a central point to the exterior

boundary, leaving the side lines to be implied (Ordenanzas de Tierras y Aguas, 181).

The initial point of the survey was at the "cross monument in front of the Cienega San Ignacio Babocomari." The bearings were taken with a mariner's compass, and though discrepancies are found either in the reading or recording of the bearings, a little study will readily determine their true meaning. The distances were measured with a rope or cord 50 varas in length. The first course, W.S.W. $\frac{1}{4}$ W., 100 cords, or 5000 varas, was the first day's run. The following day the same course was continued 300 cords more, making a total of 400 cords, or "4 sitios," or 20,000 varas, and ending at the Hot Springs.

The west end line, at right angle to the first course, was run N.N.W. $\frac{1}{4}$ N.E. 40 cords, or 2000 varas, and S.S.E. $\frac{1}{4}$ S.W. 60 cords, or 3000 varas, establishing N.W. and S.W. corners.

Returning to initial point, the "center monument," the course thence was run E.N.E. $\frac{1}{4}$ N.W. 74 cords, or 3700 varas, and completing the second day's run.

On the third day the same course was continued to a total of 400 cords, or 4 sitios, 20,000 varas, and the east end line, at right angle to former course, was run N.N.W. $\frac{1}{4}$ N.W. 40 cords, or 2000 varas, and S.S.E. $\frac{1}{4}$ S.E. 60 cords, or 3000 varas, establishing the N.E. and S.E. corners, which completed the survey.

It will be observed that on the second day the course recorded from initial point was E.N.W., which was evidently an error either in the reading or recording, but taking the easterly end line, which was, as stated, at a right angle, or 90 degrees from the former line, we find it is N.N.W. $\frac{1}{4}$ N.W., an intelligible course from which we can correct the error of the former course. The accompanying map will clearly illustrate the foregoing statements.

The variation of the magnetic meridian is at present 14° east; its annual change is $+3'$, which would be for 70 years $3^{\circ} 30'$, making the variation in 1828 $10^{\circ} 30'$ east.

Scale: 1 inch = 10,000 feet

N 11° 15' W True
 100 cords = 5000 paces
 N 11° 15' W Mag
 100 cords = 5000 paces
 N 11° 15' W True
 100 cords = 5000 paces

W 51° 15' N True
 100 cords = 5000 paces
 2nd day's run

Rancho San Ignacio

3 leagues

ENE 11° 15' W True
 100 cords = 5000 paces
 1st day's run
 CROQUIS
 GLENDA
 BUDOCORRE

N 66° 35' E True
 100 cords = 5000 paces
 N 56° 15' E Mag
 100 cords = 5000 paces
 3d day's run

N 11° 15' W True
 100 cords = 5000 paces
 N 11° 15' W Mag
 100 cords = 5000 paces
 N 11° 15' W True
 100 cords = 5000 paces
 N 11° 15' W Mag
 100 cords = 5000 paces

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Assuming for the purpose of the argument that the east end monuments cannot be found, the record furnishes that by which we can locate them. That the course from Cienega Babocomari to east end line can be no other than that stated above is conclusively demonstrated. We have the given factors.

- a. The Cienega as a center.
- b. The radius 400 cords from the Cienega to the east line, intersecting such east line 40 cords S. of northerly end, and
- c. The *direction* of the east end line which is tangent to the circle of which the Cienega is the center.

The result follows that projecting a line 400 cords from the center at Babocomari Cienega, in a direction easterly at right angles to the *direction* of the east line, will correctly *locate* the easterly center line monument as originally surveyed.

“A straight line perpendicular to a radius
“at its extremity is tangent to the circumfer-
“ence.”

“Cor. 2. At a given point of the circumference only one tangent can be drawn to “the circle.”

Davies' Geometry (Legendre), pp. 64, 65.

Summary of points as to description:

1. The grant carries area embraced within the natural and artificial monuments as shown by the Roskruge map in the record; or,

2. If the natural monuments do not control, then the grant carries as its *west half* a tract *one league wide* extending from the clearly proven monuments, the Cienega Babocomari to the Hot Springs; also as its east half four leagues easterly from the Cienega on the course perpendicular to the course of the east line stated in the survey; or,

3. If all the monuments and all of the courses and distances are rejected, the grant carries *eight leagues* to be located at the *Place San Ignacio del Babocomari*, in the jurisdiction of Santa Cruz, as the same existed at the date of the grant.

Respectfully submitted,

BYRON WATERS,
Attorney for Appellant.



APPENDIX.

Digest of historical data relative to questions
involved in this case.

1800. Estimate of population of **NEW SPAIN** at the beginning of the 19th Century, and its constituency, by Humboldt.

1--Gachupines, (whites born in Europe) }	-	1,100,000
2--Creoles, born in America,	}	
3--Indians,	- - - - -	2,500,000
4--African Negroes,	- - - - -	6,100
5--Mestizos, descendents of whites and indians }		
6--Mulattoes, " " " " negroes }		1,231,000
7--Zamboes, " " negroes " indians }		
Total,		5,837,100

Humboldt's New Spain, [John Black] 1811, Vol. II, p. 246,—
Id. Vol. I, p. 183.

Upon the conquest by Spain, all Indian property, both land and goods, was conceived to belong to the conquerer.

Id. Vol. I, p. 136.

The services of the Indians were shared out upon *Encomiendas*, to the officers of the army of Spain and to the monks.

Id. Vol. I, pp. 136-7.

This system of slavery was annulled by King Charles III, and he also prohibited the *repartimientos*, by which the *corregidores* arbitrarily constituted themselves the creditors, and consequently the masters of the industries of the natives, by furnishing them at extravagant prices, with horses, mules and clothes.

Id. Vol. I, p. 138.

Next was placed the administration of Indian industry in the *intendencias*, whereby the labor of the Indian, as under the system of the *encomiendas* was enforced; but instead of inuring to the benefit of a personal master, went to the royal treasury, as a trust fund, for the benefit of those who earned it, but who could never receive recognition.

Id. p. 144.

This oppression was inflicted upon all Indians and castes, constituting more than three-fifths of the population of New Spain, and the condition of the creoles, (who made ninety per cent of the white population,) was politically but little better, owing to distrust of them by the court of Spain.

Id. p. 153.

1810. Out of these wrongs grew the Mexican revolution.

1821. Independence was gained under the plan of Iguala, which was that of a limited monarchy, securing the Roman Catholic religion, and the equality of the Spaniard, creole, Indian, African and all castes, as citizens, and alike eligible to places of honor and trust.

History of Mexico, [Huntington,] Vol. I, p. 168.

1822. Pending temporary organization, Iturbide procured his election by the provisional Cortes as Emperor, and immediately he insisted that his power should be well nigh absolute, and fixed so by the written constitution, and the

controversy, which was thus continued for a year, resulted in the resignation and banishment of Iturbide in 1823.

In 1824 it was proposed in Congress to adopt a central government, which in some of the provinces caused such alarm as to occasion civil commotions and open revolt.

This popular feeling had no doubt great influence in causing Congress to adopt the federative system of government, and on February 2, 1824, a federal constitution was adopted.

Id. 192.

1823-4. *Bancroft's History of Mexico*, Vol. 5, pp. 1-44.

Under the rule of the Montezumas, as well as after the conquest by Cortez, Apache prisoners were made slaves in the *tierra caliente*, where hasty death to them was certain.

Humboldt's New Spain, Vol. I, p. 179.

1835-47. The Central System, *Bancroft's History*, Vol. V, pp. 151-260.

1846. Lt. Col. Emory traversed Arizona and wrote an interesting account of the Gila and San Pedro Section— New Mexico and California.

Emory, pp. 77, 98.

1846. Lt. Col. Cook also saw San Pedro, and fed his Mormon Battalion on the wild beef of the Babocomori and Boquillas Ranchos.

Id. 555.

1851. Col. Graham, and his surveying parties engaged in locating the national boundary line, luckily came to San Pedro and Babocomori at a time when their supplies were totally exhausted, and found there the only beef that was between El Paso, Texas, and San Diego, California.

Report of Col. Graham, Mexican Boundary, pp. 32-45.

1863. J. Ross Browne accompanied Superintendent of Indian affairs for Arizona, Charles D. Poston, upon a tour of southern Arizona, and the former wrote a most entertaining account of the country, its peculiarities, its people and its history. His chapter devoted to the Gadsden purchase gives the best description of the civilization, or rather barbarism, with which southern Arizona has been afflicted, that has found expression.

The Apache Country, by J. Ross Browne, pp. 11-26.

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Filed - Oct 20, 1907

Supreme Court of the United States

Autumn Term, 1907

ROBERT PENNIN, Appellant,

THE UNITED STATES, Appellee.

ADDITIONAL BRIEF FOR ROBERT PENNIN BY
HIS ATTORNEY, JOHN T. MORGAN.

JOHN A. DARWIN, Printer, Washington, D. C. 1-12-08

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

ROBERT PERRIN, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

**ADDITIONAL BRIEF FILED BY LEAVE OF THE
COURT.**

I.

Some additional facts have come into this record by stipulation, and other facts appear historically, from official maps and records, to wit: (a) the certified Spanish copy of the original expediente, taken from the Mexican archives at Hermosillo, which was not put in the record in the Court of Private Land Claims, and a translation thereof into English, made by an official translator of the Bureau of American Republics, which are on file in this cause and are printed as part of the record. Said papers are referred to as a part of this brief.

And (b) an official map of Arizona, showing the surveys of that Territory by the United States, certified by the Commissioner of the General Land Office, a copy of which is herewith filed as part of this brief, marked Appendix 1.

And (c) a record from the War Department tending to impeach the testimony of H. O. Flipper, a witness for the United States, who has also been commissioned by the special attorney of the United States, appointed under the act of 1891, to examine the records of land grants in Sonora. This paper is relied upon as an admission of the United States, the appellee in this cause, of record in the War Department, that said Flipper was dismissed from the army as an officer upon charges and specifications found to be true by the judgment of a lawful court-martial; which charges and specifications include a military offense which is the moral equivalent of perjury, and of the embezzlement of public funds by said Flipper, a copy of which record is appended to this brief, marked Appendix 2.

Attention is also invited to extracts from the record in the case of the Calabasas grant, showing the condition of ruin to which that region of country along the San Pedro river and Babocomori creek was brought by the wars of the Indians as late as 1854. An extract from the deposition of Peter R. Brady in that case is appended hereto, marked Appendix 3.

II.

On various facts of an historical nature touching the "usages," "customs," laws, and practice in making land sales and grants in Mexico, reaching back to the origin of the "nation," and on the proof of the construction of land laws by experts, the appellant in this case, invites attention to the deposition of Juan A. Robinson in the record in Coe's case, pages 64, 65, and to the deposition of Kitchens in Ainsa's case (Record, pp. 55, 56), and to the deposition of Castenada, and the deposition of Forbes in Coe's case, and to Hopkins' report, as an agent of the United States, made to the Secretary of the Interior, and to the report of Wasson, surveyor general, in Ainsa's case, all of which are

evidence against the United States as to matters they were instructed to report upon.

These additional proofs, except those brought into this record by specific stipulation, are cumulative for the most part, but they explain facts that are not so distinctly stated in the record in this case, and are referred to, on this rehearing, under the statute.

The parts of the testimony of H. O. Flipper in the case of the Calabazas grant, on pages 204, 205, 206, and pages 212, 213, 225, 227, relating to his interest in these suits, and showing that Mexican land grants for centuries were marked as to location and boundaries by natural objects and monuments, instead of lines defined by actual measurements, and by the courses and distances given in the notes of the surveyors, are hereto appended and marked Appendix 4.

III.

In article VI of the treaty of 1853 the English translation is clearly erroneous in attributing to the Spanish word "inscribir" the definition "located." This English word may have been used by our negotiators as being appropriate to describe or to include floating grants, like our land warrants, or more like the grants then recently made by Santa Anna to the heirs of Iturbide. But the Spanish word "inscribir," if it ever admits of that definition, is almost universally employed as signifying "in writing" or "written," as contradistinguished from our less accurate words "oral," "unwritten," or "parole," when it is applied to contracts, etc. The following definitions of the word "inscribir," taken from a standard Spanish dictionary, supported by the statements of the official translators in the Department of State and of the Bureau of American Republics, show that this verb is not used in Spanish to express the sense of "located" in the English language.

INSCRIBIR.—(Del lat. *inscribere*.) a. Grabar letreros en metal, piedra ú otra materia.—Apuntar el nombre de una persona entre los de otras para un objeto determinado. For. Extender en los libros del registro de la propiedad los asientos definitivos de los títulos por los que se constituye, traslada ó extingue el dominio de los inmuebles, ó algun derecho real.—Geom. Trazar una figura dentro de otra, de modo que, sin cortarse ni confundirse, estén ambas en contacto en varios de los puntos de sus perímetros.

Diccionario de la Lengua Castellana por la Real Academia Española, 12ª edición, 1884, pp. 600.

Translation.

INSCRIBIR.—(From the Latin *inscribere*.) Verb, active. To engrave letters on metal, stone, or other substance. To write the name of a person, among those of others, for some determinate purpose. Legal: To spread upon the books of record of property the definitive entries of the titles constituting, transferring, or extinguishing the ownership of real estate, or some absolute right. Geometry: To draw a figure within another, so that they shall both come in contact at various points of their perimeters without crossing each other or commingling.

Dictionary of the Castilian Tongue of the Royal Spanish Academy, 12th edition, 1884, pp. 600.

I hereby certify that the foregoing are respectively a true copy of the definition of the word *inscribir* in the Spanish Academy Dictionary and a translation thereof, the latter being literal and correct.

A. W. FERGUSSON.

WASHINGTON, D. C., *March* 18, 1898.

I hereby certify that the definition, copied from the Spanish Royal Academy Dictionary, of the verb *inscribir* is a true copy; that the translation of said definition made by A. W. Fergusson is correct, and that the word *inscribir* can in no sense be taken to mean "to locate" in English.

H. GUZMÁN,

Chief Translator, Bureau of the American Republics.

"Located" is undoubtedly an erroneous translation of "inscritas."

HENRY L. THOMAS,
Translator to Department of State.

WASHINGTON, *March 18, 1898.*

The argument of the counsel for the Government relies upon a definition of "inscribir" which in some of the lexicons is applied to a geometric figure or delineation. There is no reason for the application of such a method of description to Mexican land grants, of which maps are never made by that government.

The learned counsel gives no weight to the legal definition of "inscribir," which he quotes on page 12 of his brief as follows:

"To spread on the books of the registry of property the formal entries of the titles by which the dominion of immovables or of some right real is constituted, transferred, or extinguished."

The geometrical meaning at best is only special and not general, applying only to the class of figures described, and it is not to be supposed that in the framing of a treaty the negotiators adopted what is at best a very strained acceptance of a word.

On page 13 of the brief is the following statement:

"There is no better way of arriving at the meaning of words in use by foreigners than by consulting the dictionaries written by themselves in their own language."

The Royal Academy Dictionary, edition of 1884, defines "localizar" as follows: "Localizar.—(de local.) a. Fijar, encerrar en limites determinados." Translation: "Localize.—(From *local* (place) active. To fix; to enclose in definite limits."

The verb "to localize" is defined by Webster (Int. Dict.,

ed. 1898) as "to make local; to fix in or assign to a definite place." This latter part you will see is an almost verbatim reproduction of the Spanish definition; but it does not mean, as the brief says on page 14, 'to locate,' in the sense of ascertaining where a thing is."

Mr. Flipper claims (p. 14) to "have been a close and diligent student of the Spanish language and literature for the past twenty-four years, and knows no Spanish word that so accurately expresses the meaning of 'located,' as used in the treaty, as does the word 'inscritas.'"

The gentleman then proceeds to cite a number of words which "partially express the same idea;" but despite his long and diligent research into Spanish literature he has failed to discover the word which *fully* expresses the idea of "to locate," viz: "Demarcar." Webster defines the English verb as follows: "To designate the site or place of; *to define the limits* of; as to locate a public building; to locate a mining claim; to locate (the law granted by) a land warrant."

The Royal Spanish Dictionary, edition of 1884, defines "demarcar" as follows: "Delinear, señalar los límites ó confines de un país ó terreno." Translation: "To delineate, *to define the limits* or confines of a country or land." The underscored words in each definition are identical.

All Spanish-speaking people are proverbially redundant and never allow an occasion to pass without using two or more words where one would suffice. Whoever translated the English text of the treaty was either ignorant of the technical meaning of "located" as there used or he was careless and fell into the besetting sin of his race and used a synonym of "record," *i. e.*, "inscribe," else he would have said, "No hayan sido *demarcadas* y debidamente registradas en los archivos de Mexico."

It is safe to say that there is not a Spaniard or Spanish-American living who is acquainted with the English who would translate "locate" into "inscribir."

IV.

As the word "located" is used in construing this treaty to support a severe restriction upon Mexican titles that are to be recognized by the United States, and as the Spanish word "inscribir" does not include such restriction, it is the right of Mexican claimants to land to be exempt from the harsh effect given to it by the English version of the treaty, unless that definition is necessary to give effect to the treaty in its general purpose.

The purpose of article V of this treaty and of the articles therein referred to in the treaty of 1848, and of the French treaty of 1803, *was to preserve all claims to lands existing in the right of the Mexican people as against their government, whatever may have been the nature of the claim, if it was lawful and was not opposed to Mexican public policy.*

And, if there were diverse definitions of "inscribir," some inconsistent with others, the Mexicans have the right to that definition which is least drastic and injurious as to their rights.

V.

The English word "located" was plainly intended on the part of the United States to deny the validity of secret conveyances, and to prohibit floating grants issued by Santa Anna's government or by the Republic from absorbing the lands sold to the United States under the treaty.

This definition, though it is not correct, is in accordance with the understanding of the Mexican government as to such grants; and, in their language, this purpose is fully expressed by the word "inscribir," which signifies "in writing," because a grant, in Mexican statute law, must be in writing, it must be specific, and it must be held in the archives and registered—not recorded—in the *toma de*

razon, and from that matrix of original papers, constituting the grant, a titulo or patent issues to the grantee, which refers to and describes the original papers.

These provisions of Mexican law as to all sales of land clearly incude a survey, which must include a location of the "grant," if a sale is a grant; and, when it was intended in the treaty to protect the United States against surreptitious, or concealed, or floating grants, the words "inscritas y debidamente registrados," which mean "in writing and registered," fully protected the United States by putting all public grants of land on a footing with the sales of land as to their being in writing and located and registered, but not as to their being surveyed, for a grant may be definitely located without the land being surveyed; but a sale of land must be surveyed to make the sale regular under the statutes of Mexico and of Sonora.

VI.

Aside from all controversy as to the meaning of the language of section VI of the treaty of 1853, and whether the Spanish word "inscritas" or the English word "located" shall prevail for the protection of Mexican land-holders and claimants, Congress, in prescribing a law for the administration of rights under these treaties, has not adopted the construction contended for in this case by the counsel for the Government as to the rights of Mexicans which they were intended to protect and the claims that were intended to be disallowed.

In the second paragraph of section 6 of the act of 1891 the requirements of the petition on which relief may be granted by the court are that it "shall set forth fully the nature of their claims to the lands, and particularly state the date and form of *grant, concession, warrant, or order of survey* under which they claim."

If the treaty had been construed by Congress, as it is construed by counsel for the United States in these cases, as meaning that no claims are valid that are not "located" and recorded, the court would not have been given jurisdiction to confirm claims based on warrants "or orders of survey" which could not be "located" on the ground until the survey had been completed; yet jurisdiction is given expressly to complete all surveys, even where the grants or sales are otherwise perfect.

In this legislation Congress clearly followed the Mexican laws and their construction of the treaty, that the grant or claim must be "in writing" and must be registered, but that it may be valid without having been "located" by any specific act or proceeding beyond the description of the land given in the *titulo*, or the *expediente*, or the warrant, or the order of survey that had been delivered by the Government to the claimant.

VII.

The word "located" was not intended to add a new requirement as a test of the validity of a "grant" of lands which was not then recognized in the laws of Mexico. It was only intended, if it was in fact used in the Spanish version, to protect the United States against a surreptitious use of the granting power and not to change the Mexican laws as to the validity of grants which for years had been in the possession of honest claimants or owners. It was a question whether the segregation of lands by a verbal grant, or by a grant not located (if in writing) from the *public domain*, which was being sold to the United States, should be sustained by acts or decrees of a secret nature, issued under the temptation of surrounding circumstances, to favorites or for selfish purposes, by the President of Mexico then in power.

These circumstances were sufficiently obvious to account for the caution of our negotiators in putting in article VI

as an afterthought, for such it evidently was. No such provision was inserted in the treaty of 1848 respecting the location of grants, nor was it put into the treaty of 1853 at the time the purchase of the territory was agreed upon by the respective negotiators, viz., the 25th of September, 1853. Why it was then found to be necessary is apparent from the current history of Santa Anna's revolution, which was then "in the high tide of successful experiment."

VIII.

Treated as a means of disturbing and restricting all Mexican grants, sales, titles, and claims to lands, without any limit of time as to its operation, the language of article VI is simply absurd. The last clause of that article, if so intended, would have reached that result if it could be made to comport with article V so as not to extinguish rights and claims secured by that article.

The last clause in article VI refers to the first clause, which fixes the 25th of September as the date after which the restriction as to location and registry of grants should take effect. But that date is retained in the article, and it is added in the last clause that grants should be invalid if they were not located and registered, without reference to the date of the issue. The last clause annuls the first clause, and yet it is left standing in the text. To produce this very anomalous situation the negotiators must have had in view some facts of current history as to the issue of grants by Santa Anna that created a new and peculiar situation that was different from that which existed under Mexican laws on the 25th of September, 1853, and was not publicly known at that date.

It was to guard the United States against this new condition of affairs that this otherwise inexplicable article was inserted in the form it is found in the treaty.

A chronological reference to the following historic events furnishes that explanation:

February 6, 1853, the second plan of Jalisco, in article 91, conferred the presidency on Santa Anna for the unexpired term of one year.

March 11, 1853, he granted to the heirs of Iturbide 30 leagues square—*900 square leagues of land*—in payment for an alleged debt of the provisional sovereign council of government, under a decree of February 22, 1822, for \$200,000, "which they will receive necessarily in public lands in Lower California or Sonora or in Sinaloa, at the option of the parties in interest, to the extent of thirty leagues square, with the right to take them all at one place or at different places if it suits them." (Reynolds, p. 322.)

September 21, 1853, Santa Anna issued the following decree:

"His Excellency the President of the Republic has been pleased to order that what has been heretofore called States be hereafter called Departments; and, by supreme order, I have the honor to communicate it to Your Excellency for punctual compliance therewith, assuring you of my consideration." (Reynolds, p. 323.)

November 25, 1853, Santa Anna declared that the public lands are the exclusive property of the nation and never could have been alienated by the States, and he declared such titles null and void, but did not so decree them. (Reynolds, p. 324.)

In 1854 he annulled them by a decree.

December 16, 1853, Santa Anna declared himself President for life. (Reynolds, p. 325.)

July 7, 1854, Santa Anna by decree annulled the titles to lands given by the States, his decree in 1853 being modified as to its scope. (Reynolds, p. 326.)

IX.

As the VI clause of the treaty of 1853 did not purport to change the treaty of 1848 as to the rights of Mexicans in their claims to lands, the scope of that article does not include land grants made prior to 1848, the date of that treaty, and this fact, together with the grant of 2,700 square miles of land to Iturbide, shows that our negotiators intended to suppress the grants made to Iturbide and all other grants made by Santa Anna in the ceded territory, of which there was no specific designation in writing of their location, and which had not also been registered in *toma de razon*.

X.

Mexico never had a general survey of its lands, either in the States or Territories, so that it was impossible to "locate" or to find the location of tracts of land that were segregated from the public domain, by reference merely to the field-notes of a survey without the aid of natural or artificial monuments or of astronomy. Their surveyors were not highly skilled. They had no astronomers or geometricians in their frontier settlements, and their compasses or other surveyors' instruments were not indexed in degrees, minutes, and seconds. They were very rude, but were the Galvan standard at that early day, and all surveys were made with these inaccurate instruments. Necessarily, therefore, they could not make perfect surveys, and they located lands by the names of places when they had names that were generally recognized, or otherwise by reference to natural objects, which were described in the field-notes of their surveys, and the demarcation of surveys were in like manner designated by their bearings toward natural objects, roughly stated. The *measurement* of surveys, often made by computation, were also designated by natural and arti-

ficial monuments that the laws required the grantee to erect, under a penalty if he neglected that duty.

To erect such monuments was not to "locate" the grant, but to preserve the evidence of its measurement, and to describe its location.

XI.

The Babocomori grant, however, was "located"—placed—geographically, by universal understanding among the people and the government officials, and was well known in the church and among the herdsmen and Indians.

No one who wished to find its location could ever fail to do so, because it included Babocomori creek, a stream in an arid country that emptied into San Pedro river; and the creek and the place, surrounded on three sides by mountains, comprised the only place in the world that was known by that name. Its name was baptismal. One who sought to find this place would never go to a Mexican map or land plat for information, for the reason that none were required by law, and few were made for private use; nor would he examine for a survey that indicated the actual outer boundaries of a grant, because such surveys were seldom if ever made.

A center line or course intersected by end lines based on actual or estimated measurements is valid in Mexico and answered for all surveys by the government in 1827 and since that time.

The survey and all the proceedings in this *expediente* and *título* relate to a well-known place, not too extensive for two stock ranches, named—called—San Ignacio del Babocomori, which was, from the earliest days of Spanish dominion, so definitely "located" that no one, even a stranger, could mistake it.

It was both located and registered in the archives of Mexico in accordance with Mexican law, if those require-

ments apply to this grant and are necessary to its legal validity.

XII.

If the grant is held to be invalid for the reason that it was issued by a State, and that Santa Anna's decree revokes all grants issued by the States, that does not exclude it from the jurisdiction of the court, nor does it give to the United States the better right to the land, because Congress declares in the act of 1891, in section 13, that a claim to be allowed must "appear to be upon a *title*," which may or may not be by grant "lawfully and regularly derived from the government of Spain or Mexico, *or from any of the States of the Republic of Mexico* having lawful authority to make grants of land." No State of Mexico could have authority to make grants of land which was in lawful, private ownership, and this provision of the law of the United States would be absurd if it did not apply *to the public lands within a State*; so Congress recognizes in this act the validity of a title derived from Sonora, if Sonora has the lawful authority to make grants of land under the constitution of Mexico, and it disregards the declaration of Santa Anna that the States could have no such authority to make any grants whatever.

It seems very clear that Congress would not have given the court jurisdiction to enforce a land grant made by a State if Santa Anna's decree had been respected to the extent that no State ever had authority to make such grants of vacant lands. That decree is retroactive, and such laws are expressly forbidden by the Constitution of 1824, which also prohibited amendments that would repeal that clause.

XIII.

The copy of the original expediente in this case, brought into the record by stipulation, relieves the survey of some of the uncertainties that furnished the basis of argument, against the validity of the grant, to the counsel for the Government.

It now appears that the alcalde who made the survey met the other parties at the rancho San Pedro on one day and summoned the colindantes; went from that place on a day appointed a month later to the place called San Ignacio del Babocomori, in company with his assistants, and established at the cienega the point that should be the initial point from which the center line of the entire survey should be established, eastwardly and westwardly.

At this initial point he caused to be erected a monument on a small hill in front of the cienega of Babocomori. This is a center that is located definitely by three prominent natural objects, viz., the creek, which was well known by name; the cienega, which was connected with the creek and is the only cienega in that part of the country, and the small, bald hill in front of the cienega on which a monument was placed. All these objects, including the monument which Flipper and Roskrue found, are still there and are unmistakable.

It is rare to find in any country, after the lapse of seventy years, such permanent and conclusive witnesses to the location of the initial point of two extensive surveys—one to the east and the other to the west—each twelve miles long.

XIV.

This correct copy of the expediente also clears up the difficulties in the "courses" that were so disturbing to Mr. Flipper's conscientious imagination. In the titulo (patent) that was issued to the Eliases several years after the sale of the land, the copyist substituted capital letters, as N. N. W. and S. S. E., &c., for written words in the expediente, and his clerical mistake has greatly confused Mr. Flipper in testifying as to the location and measurement of the grant. He found the acreage of the grant to be excessive, but declares that no one can follow the survey. He examined the original survey in the expediente at Hermosillo and testified that the survey in the titulo, as it is set out in this

record before it was amended, is a true copy of that expediente as to the field-notes of the surveyor, when the copy of the expediente, as it is now produced in the record, contradicts that statement.

XV.

It is clear, as the record is now, and it was clear before the copy of the expediente was produced, that the courses of the survey can be followed by any competent surveyor, and that they lead directly to the natural objects and to the monuments described in the calls of the surveys. The only difficulty is the measurement of the central line. These courses and calls establish the central lines of both surveys, extended from the center monument, in front of the cienega. The end lines of the sitios, *at right angles* to the center line, lead from both ends directly to the center monument, at the cienega. This gives a geometric demonstration of the lines of the survey as it was actually made, and locates the center monument also, by reference to those at each end. It is very remarkable that, as to the center lines of the survey, it should have been so accurate when made with such imperfect instruments. As to the measurement, that was not pretended to be correct, as much of it was mere computation. As to the outside boundary lines, they were not laid down, nor was that a requirement of a valid survey in Mexico, either by law or usage.

XVI.

As to the excess of land in the place surveyed and demarked by the central line and by marked corners, that was well known to all the officials employed in making the sale and was stated on the record, and it was approved by all of them. The excess was provided for in the petition of the Eliases, set out in the titulo, *who did not claim any cer-*

tain quantity of land or any number of sitios, but claimed the "place called Ignacio del Babocomori," for the grazing of cattle and horses.

The law permitted the sale of only four sitios to one person, and that was also the legal basis of the valuation of the land.

But section 21 of the law of Sonora, May 20, 1825, which is referred to in the expediente, provides that "to no one who is a new breeder of cattle shall more than four sitios be given," and "22. To those who, from the abundance of their stock, need more, although old breeders (being old breeders), the Treasurer General shall grant only so much more as they need." These powers are not in conflict. (Reynolds, p. 130.)

Here is power to grant more than four sitios to an old breeder of stock, given to the Treasurer General, and his discretion is only limited by the needs of the old breeder of stock. It is an *ex parte* proceeding until the final auction of the land, depending upon the almost unlimited discretion of the treasurer as to the quantity of land he will adjudge to an old breeder of stock. The record shows that the whole subject was considered and adjudicated by the Treasurer General after investigation and report in writing made by the Attorney General under section 24 of the law. Section 25 enables the Treasurer General, upon proof or secret information, to investigate the whole subject, with all these ample powers to adjust the grant to the needs of a stock-breeder, without his participation in the proceeding further than to point out the land. The Government cannot repudiate the entire grant after the lapse of seventy years, during all of which time possession of the place granted has been actually held, as far as has been possible, even at the expense of human life in defending it, by the grantees and their successors.

Mexico had cut itself off from the power to question the validity of this grant on the ground that the quantity of

land conveyed was excessive. Whether or not it was excessive, that place was segregated from the public domain, and at least eight sitios were granted, and this court of equity has ample power to correct the excess and still save the grant, under the express provisions of the act of 1891.

But this court cannot correct the excess if it was lawfully within the power of the Treasurer General of Sonora to allow it in the grant, and he did allow it to an old breeder of stock. If this grant is now invalidated for the reason that it was sold for too small a sum, who will refund to the Eliases or their successors the money paid for it?

The Eliases earned the excess of land, which was of no value to Mexico, many times over by their contributions of food to the people and by their frequent bloody conflicts in defending this advanced settlement, which Mexico engaged to defend against the Indians.

XVII.

In Appendix 4 to this brief the historical facts prove that the United States after it took possession of that country could not protect it against the Indians, who destroyed all the cattle ranches on the San Pedro and Babocomori, leaving them in ruins.

If men ever earned property from a government, this has been earned.

To this day no other ranches have been established adjoining Babocomori, except a military reservation to the south of it and bordering upon it.

XVIII.

Does the United States need this land for revenue? If so, its needs will never be met, for it is of little value and will never be sold for money. If it is appropriated as public domain, the beneficiaries will be a nomadic, squatter

population, who will be there to live off the cattle ranges, and instead of being honest men controlled by law, the evidence in this case shows that they drive off the lawful owners with bloody violence.

The owners of these land grants have been prevented by the violence of these squatters, of whom Flipper is one, from making a survey of the lands, so as to protect their titles and inform the court as to their rights.

These interferences, with threats and violence, are stated in the testimony of Roskrige and others, and they have prevented surveys with chain and compass to get the exact location of the landmarks and the area of the first survey.

XIX.

In the report of the alcalde surveyor of the original survey, copied in the expediente in this case and in the titulo, there is some confusion in the readings of the compass, which is plainly due to the imperfect chirography or the spelling of Spanish words by the surveyor, or, possibly, by the copyists.

The courses, as stated, are sufficiently described to enable a surveyor to trace all of them on the ground. The confusion, in almost every case, comes from the reading of the compass in reverse, or in the "back sights." In some of the most important lines there is no confusion as to courses, and there is no confusion or want of clear description of the objects described in the calls, or in their relative bearings to each other.

These minor difficulties disappear in view of the conclusive evidence as to the actual location of the grant and its clear description by permanent landmarks, chiefly those of the water springs, the cienega, and the creek, which are conspicuous and unfailing features of the topography of a country that is generally arid and treeless, and in a narrow valley flanked with high hills and deep gulches.

With so many conspicuous natural objects to mark the locality and to define the survey of this grant, it is not in accordance with our treaty obligations or with the spirit and the requirements of the act of Congress of 1891 that the United States should claim title to the place called San Ignacio del Babocomori upon such slender and doubtful ground as a mistake in writing the field-notes of a survey made by an illiterate surveyor, who was selected and appointed by the government under which the United States derives its asserted title, to measure a tract of land for sale to its own citizens.

XX.

We cannot afford to claim this land as the public domain of the United States against an open adverse possession of seventy years by persons who are, in the strictest sense, *bona fide* purchasers of this land, the price for which was fixed by Mexico and paid by the purchaser.

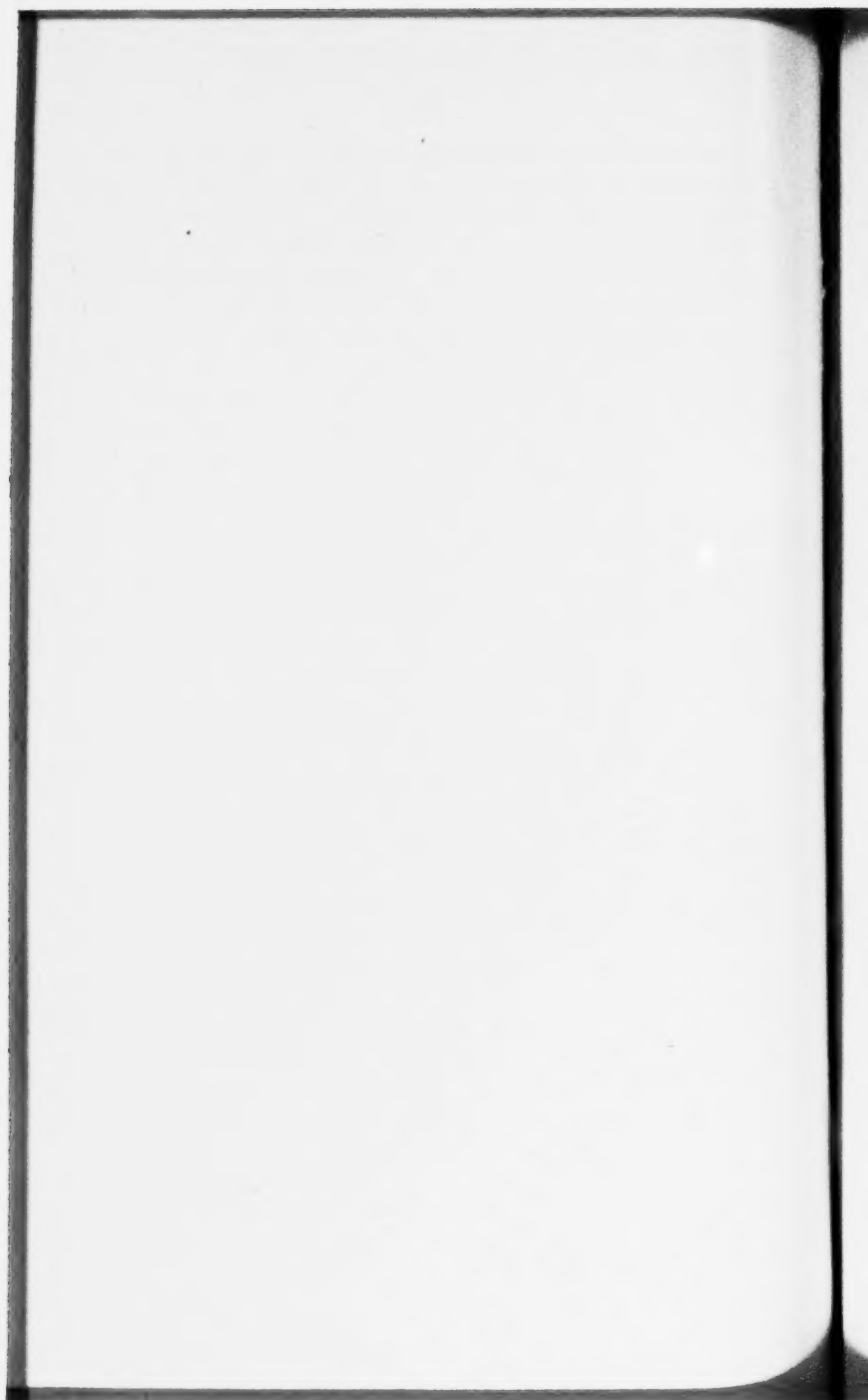
It is better and more just, in view of the language and purposes of the treaties with Mexico, to hold, as Congress has enacted, that any honest claim of a Mexican to land granted to him by his own country should prevail against the claim of the United States when a court, finding that the claim is equitable, is given the power to enforce it in any form and to any extent that Mexican law and good conscience demands, according to the facts of the transaction.

XXI.

The international aspect of these cases is worthy of careful attention, especially in the features that relate to the enforcement of Santa Anna's decree of general confiscation. The time at which we entered into this treaty, the President of Mexico with whom we concluded the negotiation, and the fact that this transaction occurred when he was *in fla-*

grante delicto in the conduct of a bold usurpation that Mexico has denounced as a great national crime, all admonish us that there should be a solid foundation in law and justice to justify the United States in claiming lands that had been in the undisputed possession of honest Mexican citizens for nearly a half century, when our alleged right of property is derived from a decree of Santa Anna.

JOHN T. MORGAN,
Attorney for the Appellant.



APPENDIX 2.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1897.

WILLIAM FAXON, JR., <i>Trustee, et al., Appellants,</i>	}	No. 119.
<i>vs.</i>		
THE UNITED STATES AND GEORGE W. ATKINSON <i>et al.</i>		

Appeal from the Court of Private Land Claims.

*Certified Copy of Court-Martial Order Dismissing 2nd Lieut.
Henry O. Flipper from U. S. Army.*

Francis J. Heney, attorney for appellant William Faxon, Jr., trustee.

GENERAL COURT-MARTIAL }
ORDERS, No. 39.

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
Washington, June 17, 1882.

I. Before a general court-martial which convened at Fort Davis, Texas, November 4, 1881, pursuant to Special Orders, No. 108, dated September 3; No. 131, dated October 18; and No. 133, dated October 22, 1881, from Headquarters Department of Texas, San Antonio, Texas, and of which Colonel GALUSHA PENNYPACKER, 16th Infantry, is president, was arraigned and tried—

2d Lieutenant *Henry O. Flipper*, 10th Cavalry.

CHARGE I.—“Embezzlement, in violation of the 60th Article of War.”

Specification—“In this: that 2d Lieutenant *H. O. Flipper*, 10th Cavalry, did embezzle, knowingly and willfully misappropriate and misapply, public money of the United States, furnished and intended for the military service thereof, to wit: three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), more or less, which money came into his possession and was intrusted to him in the capacity of acting commissary of subsistence at the post of Fort Davis, Texas. This at Fort Davis, Texas, between the 8th day of July, 1881, and the 13th day of August, 1881.”

CHARGE II.—“Conduct unbecoming an officer and a gentleman.”

Specification 1st—“In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, having been directed, at or near Fort Davis, Texas, on or about the 8th day of July, 1881, by his commanding officer, Colonel William R. Shafter, 1st U. S. Infantry, commanding the post of Fort Davis, Texas, to transmit certain funds, for which he, Lieutenant *Flipper*, was accountable as acting commissary of subsistence, to the chief commissary of subsistence of the Department of Texas, and on being asked at or near Fort Davis, Texas, on or about August 10th, 1881, by Colonel Shafter, if he had transmitted the said funds, part of which were in checks, did then, in substance and tenor, assure him, Colonel Shafter, that he had transmitted said funds; that he had endorsed the checks making them payable to the order of said chief commissary of subsistence of the department, and sent the amount by mail; that he had taken the letter to the post-office himself, he, Lieutenant *Flipper*, well knowing the same to be false, in that the said funds had not been so transmitted and the checks had not been so endorsed.”

Specification 2d—“In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being on duty as acting commissary of subsistence at the post of Fort Davis, Texas, did submit for the approval of the post commander, Colonel William R. Shafter, 1st U. S. Infantry, his, Lieutenant *Flipper's*, ‘weekly statement of public funds,’ in words and figures to wit:

SUBSISTENCE DEPARTMENT U. S. ARMY,
FORT DAVIS, TEXAS, *July 9th, 1881.*

SIR: I have the honor to report my balance of subsistence funds on deposit and in hand at the close of the week ending Saturday, July 9th, 1881, as follows:

Deposited with the ass't treasurer of the U. S. at ——— \$
Deposited with the U. S. designated depository at ———
Deposited with the ——— National Bank at ———
Deposited ———
In transit to chief C. S., San Antonio, Texas, since July 9th, 1881.....	3,791 77
In my personal possession, in office safe.....	150 17

Total amount..... \$3,941 94

Very respectfully, your obedient servant,
(Signed)

HENRY O. FLIPPER,
2d Lieut., 10th Regt. of Cavalry, A. C. S.

To the CHIEF COMMISSARY OF SUBSISTENCE,
Headquarters Department of Texas, San Antonio, Texas.

which statement was false, and known by him, Lieutenant *H. O. Flipper*, 10th Cavalry, to be false, in that the funds reported by him as in transit, and amounting to three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), were not so in transit, but had been retained by him or applied to his own use or benefit. This at Fort Davis, Texas, on or about the 9th day of July, 1881."

Specification 3d—"In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being on duty as acting commissary of subsistence at the post of Fort Davis, Texas, did submit for the approval of the post commander, Colonel William R. Shafter, 1st U. S. Infantry, his, Lieutenant *Flipper's*, 'weekly statement of public funds,' in words and figures to wit:

SUBSISTENCE DEPARTMENT U. S. ARMY,
FORT DAVIS, TEXAS, *July 16th, 1881.*

SIR: I have the honor to report my balance of subsistence funds on deposit and in hand at the close of the week ending Saturday, July 16th, 1881, as follows:

Deposited with the ass't treasurer of the U. S. at ——— \$
Deposited with the U. S. designated depository at ———
Deposited with the ——— National Bank at ———
Deposited ———
In transit to chief com's'y subs. Dep't Texas.....	3,791 77
In my personal possession, in office safe.....	289 34
Total amount.....	\$4,081 11

Very respectfully, your obedient servant,
(Signed) HENRY O. FLIPPER,
2d Lieut., 10th Regt. of Cavalry, A. C. S.

To the CHIEF COMMISSARY OF SUBSISTENCE,
Headquarters Department of Texas, San Antonio, Texas.

which statement was false and known by him, Lieutenant *H. O. Flipper*, 10th Cavalry, to be false, in that the funds reported by him as in transit, and amounting to three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), were not so in transit, but had been retained by him or applied to his own use or benefit. This at Fort Davis, Texas, on or about the 16th day of July, 1881."

Specification 4th—"In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being on duty as acting commissary of subsistence at the post of Fort Davis, Texas, did submit for the approval of the post commander, Colonel William R. Shafter, 1st U. S. Infantry, his, Lieutenant *Flipper's*, 'weekly statement of public funds,' in words and figures to wit:

SUBSISTENCE DEPARTMENT U. S. ARMY,
FORT DAVIS, TEXAS, July 23d, 1881.

SIR: I have the honor to report my balance of subsistence funds on deposit and in hand at the close of the week ending Saturday, July 23d, 1881, as follows:

Deposited with the ass't treasurer of the U. S. at ———	\$
Deposited with the U. S. designated depository at ———	
Deposited with the ——— National Bank at ———	
Deposited ———	
In transit to ch'f C. S. Dep't Texas, San Antonio, Texas.....	3,791 77
In my personal possession, in office safe.....	479 30
Total amount.....	\$4,271 07

Very respectfully, your obedient servant,
(Signed) HENRY O. FLIPPER,
2d Lieut., 10th Regt. Cavalry, A. C. S.

To the CHIEF COMMISSARY OF SUBSISTENCE,
Headquarters Department of Texas, San Antonio, Texas.

which statement was false and known by him, Lieutenant *H. O. Flipper*, 10th Cavalry, to be false, in that the funds reported by him as in transit, and amounting to three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), were not so in transit, but had been retained by him or applied to his own use or benefit. This at Fort Davis, Texas, on or about the 23d day of July, 1881."

Specification 5th—"In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being acting commissary of subsistence at the post of Fort Davis, Texas, and in such capacity being required to make a weekly exhibit of the funds in his possession pertaining to the Government to his post commander, did exhibit to his commanding officer, Colonel William R. Shafter, 1st U. S. Infantry, commanding post of Fort Davis, Texas, as part of the aforesaid funds, a check in words and figures as follows:

Designated	No. 9.	SAN ANTONIO, TEXAS, May 20, 1881.
Depository of the		
United States.		San Antonio National Bank

Pay to Lieut. *Henry O. Flipper*, A. C. S., or order, fourteen hundred and forty and $\frac{43}{100}$ dollars.
\$1,440.43.

HENRY O. FLIPPER,
2d Lieut., 10th Cav'y.

which check was fraudulent and intended to deceive the said commanding officer, as he, Lieutenant *Flipper*, neither had nor never had had personal funds in said bank, and had no

authority to draw said check. This at Fort Davis, Texas, on or about the 2d day of July, 1881."

To which charges and specifications the accused, 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, pleaded "Not guilty."

FINDING.

The court, having maturely considered the evidence adduced, finds the accused, 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, as follows :

CHARGE I.

Of the <i>Specification</i> ,	"Not guilty."
Of the <i>CHARGE</i> ,	"Not guilty."

CHARGE II.

Of the <i>1st Specification</i> ,	"Guilty."
Of the <i>2d Specification</i> ,	"Guilty."
Of the <i>3d Specification</i> ,	"Guilty."
Of the <i>4th Specification</i> ,	"Guilty."
Of the <i>5th Specification</i> ,	"Guilty."
Of the <i>CHARGE</i> ,	"Guilty."

SENTENCE.

And the court does therefore sentence him, 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, "*To be dismissed from the service of the United States.*"

II. The proceedings, findings, and sentence of the general court-martial in the foregoing case of 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, having been approved by the proper reviewing authority and the record forwarded, in accordance with the provisions of the 106th Article of War, for the action of the President, the following are his orders :

EXECUTIVE MANSION, *June 14, 1882.*

The sentence in the foregoing case of 2d Lieutenant *Henry O. Flipper*, 10th Regiment of U. S. Cavalry, is hereby confirmed.

CHESTER A. ARTHUR.

III. By direction of the Secretary of War the sentence in the case of 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, will take effect June 30, 1882, from which date he will cease to be an officer of the Army.

BY COMMAND OF GENERAL SHERMAN:

R. C. DRUM,
Adjutant General.

OFFICIAL:

Assistant Adjutant General.

UNITED STATES OF AMERICA.

WAR DEPARTMENT,
WASHINGTON CITY, *March 15, 1898.*

I hereby certify that the five pages hereto attached are a true copy of General Court-Martial Orders, No. 39, Headquarters of the Army, Adjutant General's Office, Washington, June 17, 1882, on file in the Adjutant General's Office, War Department.

H. C. CORBIN,
Adjutant General.

Be it known that H. C. Corbin, who signed the foregoing certificate, is the Adjutant General of the Army, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof I have hereunto
Seal War Office, set my hand and caused the seal of the
United States of War Department to be affixed on this
America. fifteenth day of March, one thousand
eight hundred and ninety-eight.

G. D. MEIKLEJOHN,
Assistant Secretary of War.

APPENDIX 3.

Page 58 of Record.

PETER R. BRADY, a witness called and sworn on behalf of the petitioners, testified as follows:

Direct examination by Mr. HENEY:

Q. Mr. Brady, how old are you? A. I am in my seventieth year.

Q. Where do you live? A. I live now in Florence, in the county of Pinal, Territory of Arizona.

Q. When did you first come to Arizona? A. In April, 1854.

Q. And what part of the Territory did you land in or were you first? A. I was on a railroad survey and come on down pretty much the route of the Southern Pacific railroad as it runs now from Cow Springs by Apache pass.

Q. Did you get into the neighborhood of Calabasas that year? A. We came by there.

Q. What time of the year? A. April.

Q. 1854? A. Yes, sir.

Pages 74, 75, and 76.

PETER R. BRADY recalled for further direct examination.

By Mr. HENEY:

Q. When you first went to Calabasas did you see any sheep on the ranch of Calabasas? A. I did.

Q. About how many? A. Well, I should judge about six thousand head.

Q. Did you at that time witness any fight between the Indians and the people of Calabasas or the soldiers? A. I did.

Q. Will you relate when it was and what took place? A. It was in the month of April, 1854. The exact date I do not recollect. The Apaches had met us on the previous day, or we had overtaken them on the road—on their trail.

We had been following them, and there come up a storm of snow and hail, and they left us alone; didn't bother us much, and said they were on the way down to attack the ranch of Calabasas and take the sheep away from there. Of course, we didn't know the distance at that time, but they told us it was about a half a day's ordinary travel.

Q. You talked with them, did you? A. I talked with them through a captured Mexican; talked with their chief. We saw them first, and they did not attack us. It come on evening, and the snow got a little troublesome to travel in and we had to camp about an hour or two before sunset. A few of the Indians followed us. We could see them at a distance, but they did not annoy us that night, and the next morning we came down to the Sonoita wash, and we suddenly came upon a band of tame Apaches (Mansers), and they run away from us, but we induced them to come back. Some of them had on soldier's overcoats, and we could see right away that they were different from the ones we had seen the day before and had talked with, and the commandante of the presidio from Tucson came up with his company of dragoons, and the first question he asked was if we had seen the Indians. We told him that we had; that there was a large band of them behind us coming on, and that they would be there before long. They then invited us to go to the ranch of Calabasas, and we went a mile or two above, and while we were going the commotion commenced. The Mexican troops were all mounted, and there was a little valley close by, and the herders began to drive the sheep up to shut them up, and about one hundred and eighty Cayotero Apaches come upon them, and the Mexican troops met them at the corner of the buildings, and the Indians were very poorly armed with bows and arrows, and the Mexicans were not much better. All they had was lances and some guns, and they put the Indians to flight immediately and killed a great many of them. It was a regular slaughter. We were invited to remain there several days and recuperate by Mr. Hulseman. We were out of everything, especially flour, and we remained several days with them and got some flour and recuperated there.

Q. What was the condition of the country with reference to the Apaches in 1854 and 1855—first, were the Mexican troops still in possession here in Tucson at that time? A. They were, and remained all that year until December.

Q. Of 1854? A. Of 1854. They never left here until Christmas eve, 1854, when they pulled down the Mexican colors on the plaza and marched out.

Q. Were there any Mexican troops in Tubac at that time? A. None.

Q. Was there any settlement at Tubac at that time? A. None. There was only the one settlement at Calabasas under Hulseman and the three Germans I spoke of at Tumacacori outside of the walled garrison at Tucson; no other Europeans or Mexicans.

Q. In the whole Territory? A. Yes, sir.

Q. What was that due to? A. Apache raids, I suppose. We passed through a great many abandoned ranches on the San Pedro and Babocomori. There was nothing but desolation and ruin.

Q. What was the custom of Apaches with reference to attacking parties in the vicinity of Tucson? A. It was dangerous to go outside of the limits of the town, almost. They killed people within a mile of town here years afterwards. Property or life was not safe anywhere outside of the walled garrison of Tucson.

APPENDIX 4.

Pages 204, 205, 206.

Cross-examination by Mr. HENEY:

Q. Mr. Flipper, do you own any interest in the lands that are in conflict here or do you claim any interest? A. I do not own any interest, but I attempted to file on one hundred and sixty acres at Calabasas, and it was rejected.

Q. Do you not still claim and didn't you publish notice to the world that you claimed one hundred and sixty acres of the best land in this Calabasas grant? A. I published notice that I filed and that the filing was rejected, and that the decision had been appealed from.

Q. And notifying everybody to keep off of it? A. Nothing of that kind; no, sir. I will tell you what the notice was if you wish.

Q. Well, what was it? A. A man jumped the tract of land and was living on there, and he died or was killed and

his administrator attempted to sell it, and I notified people not to buy it; that I claimed it.

Q. And you still claim that interest? A. I do.

Q. That is one hundred sixty acres? A. Even; yes, sir.

Q. That is as good a piece of land as there is within the Guebabi grant, as claimed here? A. It is not on the Guebabi; it is on the Tumacacori.

Q. Well, that is as good a piece as there is on the Tumacacori? A. No, sir; I do not think it is. It is not as good a piece of land as some others, because of the difficulty to get water on it; but it is a good piece of land. There is no question about that.

Q. Best as you could get a-hold of? A. The rest had been taken; yes, sir.

Q. You are further interested in it, having been employed by the squatters to examine this grant and report upon it before you were ever employed by the Government? A. I was not employed by the squatters and never received a cent from them for doing anything.

Q. Did you make an examination of this grant from any purpose prior to being employed by the Government? A. I translated the expediente or testimonio of title at the request of Judge Le Barnes and furnished him some information as to it.

Q. Did you make a full report on it? A. I did not.

Q. At that time did you go to the different places called for in the expediente and make an examination? A. Of the grant on the ground?

Q. Yes, sir. A. I did not, sir.

Q. On the ground? A. I did not sir. The first I ever went to the different calls—I will give you the date exactly—it was February 19th, 1894.

Q. At the time you saw these other monuments you speak of, at an earlier date than that, how did you know they were the monuments of the Tumacacori or Guebabi claims? A. I didn't say that I saw any of the monuments prior to this time except the one above the Cienega Grande. That was shown to me by Mr. Charles Altschul, who claimed a tract of land which he said was between the Calabasas and Nogales, and he took me out there and showed me that monument and told me it was the monument of the Calabasas grant. At that time I knew nothing whatever of the Calabasas grant.

Q. Have you read the title papers of the Nogales grant?

A. I have.

Q. Don't they state that there is about a thousand feet between the north monument of that grant and the south monument of the Calabasas grant? A. One thousand steps, it says. At that time I had seen none of the papers in either case—that is, of either grant.

Q. (Exhibiting a paper.) Examine that and state whether that is a copy of your report made to Judge Le Barnes upon his grant, or whether that is the original of that report.

A. I think it is; yes, sir.

Q. Examine the signature at the end of it and the affidavit. A. Yes, sir.

Q. You have sworn to it as correct, haven't you, on the back page? A. I have sworn to the correctness of the translation.

Q. And that you then knew all the laws of Mexico relating to the subject; doesn't it go on and say that? A. No, sir.

Q. What does it say? A. (Reading:) "That the foregoing translation, carefully and scrupulously made by him, is a true and correct translation of what purports to be the original title or patent of what is now known as the 'Tumacacori and Calabasas private land claims,' situated in the Tucson land district, Pima county, Territory of Arizona. Depo-
nent further declares that his true full name is Henry Ossian Flipper; that he was educated partly at Atlanta University, Atlanta, Georgia, and partly at the United States Military Academy, West Point, New York, at which latter institution he was graduated and granted a diploma; that he learned the Spanish language at said military academy, beginning the study thereof in September, 1874; that he has been engaged continuously for the past six years on the survey of public and private lands in the Republic of Mexico; that during that time he has examined nearly two thousand Spanish and Mexican land titles, ranging in dates from October, 1665 (title of Turicachi, district of Arispe, State of Sonora), up to 1889; that he is conversant with the methods of survey and forms of titles in use in that country as well—with all the laws in force under both the Spanish and Mexican regimes—and that he believes himself thoroughly competent to translate and pass on any

Spanish or Mexican land title that may be presented to him. And further deponent saith not." I endorse that now.

Q. Had you examined two thousand titles in those ten years? A. I should judge about that many, sir.

Pages 226 and 227.

Recross-examination of HENRY O. FLIPPER by Mr. HENEY:

Q. Wasn't this (Flipper's report) gotten up for the purpose of defeating this grant? Wasn't Judge Le Barnes employed by the squatters on the grant, and was not the object and purpose of the report to show how the grant could be defeated? A. At that time the settlers on the grant had employed a lawyer in Washington, I think Le Barnes, to see if he could get the reservation lifted off this grant, and it was made for that purpose.

Q. And this report to Judge Le Barnes, did not you give it as your opinion to him that the grant of 1807 was genuine, and the only way you could defeat this grant claim was by showing indefiniteness in the boundaries? A. I have no doubt in the world now that the title of 1807 was genuine.

Q. And wasn't that the language of this report—making the boundaries indefinite? A. I believe they are indefinite yet.

Q. Wasn't that what you said in this report? A. I haven't read it since 1890, but if I said it then I say it now.

Q. (I will read a portion of it:) "It will be difficult to establish the fraudulent character of this transfer, and it will be necessary to depend on the indefiniteness of the description of the survey and the consequent impossibility of locating the grant on the earth's surface." A. I undoubtedly said that then, and I say that now.

Q. And didn't you further say in your report, "I am of the opinion that the title is genuine, notwithstanding it is obscure, indefinite, and defective, and I arrive at this conclusion the more readily because I know that all or nearly all of the titles issued by the Spanish authorities which I have examined are equally obscure, indefinite, and defective?" A. I endorse the same thing now. The title of 1807 is undoubtedly genuine.

Pages 212 and 213.

Q. In examining these title papers, Mr. Flipper, in grants in Mexico which you examined, did any of them purport to be Spanish grants—grants made by Spain? A. Yes, sir; the larger part of them, I should say.

Q. In your examination of those papers did not you find that the large majority of them were fully as obscure, indefinite, and uncertain as the titulo in evidence here of 1807 in regard to boundaries? A. I would hardly say a majority, but a large proportion of them were.

Q. In making a survey of any of these grants could you and would you find the monuments by taking the courses and distances as given in the titulo? A. In some few cases.

Page 217.

Q. Did you find that the monuments compared at all with the courses and distances called for in the title papers? A. In the revised surveys we did.

Q. When the courses and distances given were in the revised surveys, but not those in the original title papers? A. Rarely—very, very rarely.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

ROBERT PERRIN, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

No. 30.

**Additional Parts of the Record in this Cause which
are brought into it by a Stipulation of the Attorneys
of the Respective Parties to which said Papers are
Appended.**

Copy of the record and proceedings had in the measurement of eight *sitios para cria de ganado mayor y caballada* (live-stock ranch) in the localities called "San Ygnacio del Bavocómari" in behalf of the citizen Ygnacio Elias and Doña Eulalia Elias.

{ Seal of the Treasury General of the }
{ State of Sonora, Feb. 8, 1898. }

A fifty-cent stamp, duly cancelled. Citizen Treasurer General: Ygnacio Bonillas, a resident of Nogales, and temporarily in this capital, appears before you and states: That, as appears by the letter, the original of which I hereto annex, of Mr. Robert Perrin, owner of the land known as

"San Ygnacio del Bavocómari," situate in the territory of Arizona, United States of the North, needs a certified copy of the record relating to said land existing in the archives of the Treasury under your worthy charge; and the said Mr. Perrin having authorized me to solicit the said copy in his name, I pray you to be pleased to order that the said exemplified copy issue to me for the purposes that may suit the interested party. I make all necessary protestations. Hermosillo, February 5, 1898. Ygnacio Bonillas. Received on the seventh instant, and let the copy requested issue as prayed. V. Aguilar. (A sign manual.)

Stamp, 3rd class. 2 reales. Years 1822 and 1823. Qualified. The Constitution sworn to by the King on March 9, 1820. Qualified by the State of the West for the years 1827 and 1828. A stamp which reads: "Qualified by the Mexican Republic for the years 1824 and 1825."

Mr. Treasurer General: Don Ygnacio Elias and Doña Eulalia Elias, before Y. H. appear in due form and say: That needing land for suburban property, they, in company with Don Rafael Elias, Captain Don Ygnacio Elias and Don Nepomuceno Felix, denounce the public land bordering on the San Pedro ranch, within the limits of Santa Cruz, as far as the point of Tres Alamos, binding ourselves to pay to the Nation the corresponding fees and to perform all else that justice may require until we acquire title through grant and confirmation, to which end you will be pleased to hold the said public land as recorded and denounced. Wherefore we pray you to order that what we petition be done, thereby granting us grace. Arispe, March 12, 1827. By consent and at the request of Don Ygno. Elias. Joaquin Elias. (A sign manual.) Eulalia Elias. (A sign manual.)

Cosala, July 1, 1827.—The chief of police of Santa Cruz, by authority thereunto conferred upon him, without prejudice to third parties representing better rights, will proceed after citation of the abutting owners, to the measurement, valuation and crying for thirty consecutive days, of the lands mentioned in the foregoing denouncement, following in all things the sovereign decree No. 30 of the Honorable Constitutional Congress of the State, of May 20, 1825, and the regulations accompanying the same; and after having carried out these proceedings, he will make return of the same to this Treasury, notifying the bidders that may present themselves to appear in person or by attorney at the auction

which must be held in the said office after the customary three public auctions. The Treasurer General of the State, Nicolas Ma. Gaxiola, so decreed and signed. Gaxiola. (A sign manual.)

In the presidio of Santa Cruz, on the fifth day of the month of October of eighteen hundred and twenty-eight. Pursuant to the foregoing decree of the Treasurer General, let the provisions of the said decree dated July 1, 1827, be executed, and to that end, after summoning the interested parties, abutting owners, expert surveyor, and other necessary officials which must be named, and calling for me, go to the hacienda of San Pedro for the purpose of proceeding with the measurement of the *sitios* desired by the parties in interest. The citizen Alejandro Franco, constitutional alcalde of the presidio of Santa Cruz, by this decree so ordered and signed, with the assistants commissioned to act with him in default of a notary, according to law. For Alejandro Franco, Ramón Romero. Assistant, Ramón Romero. Assistant, Franco. Gauna.

At the hacienda of San Pedro, on the eighteenth day of the month of October of eighteen hundred and twenty-eight, I, the said judge, there being present the citizen Ygnacio Elias, for himself and as attorney for his sister, Doña Eulalia; the abutting owners, citizen Captain Ygnacio Elias and Nepomuceno Felix; the expert surveyor, citizen José Maria Caballero, Lieutenant Colonel of Engineers; whom I notified, and to whom I made known the foregoing decree, and who stated that they understood the same and acknowledged service of the summons and appointments; designated the twentieth day of the same month as the time to proceed to the measurement; and they signed with me and my assistants in the usual form. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygno. Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) José de Caballero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Having arrived at the place named, San Ygnacio del Bavocómari, on the twentieth day of the same month and year, the point where the surveys of the citizens Captain Ygno. Elias Gonzales and Nepomuceno Felix end—in a direction east-northwest by west-southwest—accompanied by the party in interest, the expert surveyor, the officials which must be named and assistants, I ordered that before begin-

ning the survey a reconnoissance or visual inspection be made of the land to be surveyed on the petition of the citizen Ygnacio Elias and his principal, Doña Eulalia. And after inspecting it thoroughly, I found it to be ample for the raising of live stock, the greater part having water flowing from permanent springs; but also having the one drawback of being dangerous as it furnishes hiding places for the Apache enemy. And in order that it may appear of record, I make it a part hereof, which I signed with my assistants who act with me. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygno. Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) Ygno. Elias Gonzales. (A sign manual.) José de Caballero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

On the same day, month and year, I, the judge commissioned to proceed to the survey of the land denounced, on a bald hill, in front of the small marsh of San Ygnacio del Bavocómari, appointed the citizen Lorenzo Sortillon as counter; the citizens Andres Mendoza and Pablo Elias as chainmen; the citizens Antonio Campoy and Mauricio Neiva as rodmen; and together with the expert surveyor, citizen Lieutenant Colonel José Ma. Caballero, they accepting the said appointments, and each taking the customary oath in proper form to faithfully and lawfully discharge the duty assigned to each one, without fraud or deception, and to each act according to his best knowledge and understanding, and those who could signed with me and my assistants in the ordinary form, to which I certify. For Alejandro Franco, Ramón Romero. (A sign manual.) Lorenzo Sortillon. (A sign manual.) Pablo Elias. (A sign manual.) For Andres Montoya, Antonio Campoy and Mauricio Neiva, Francisco Gauna. (A sign manual.) Assistant, Ramón Romero. Assistant, Francisco Gauna. (A sign manual.)

On the same spot, and on the day, month and year, there being present the parties interested, officials and assistants named, in order to proceed to the survey, I ordered that a cord of fifty varas be measured, and tying its ends to two poles, the said survey was commenced by the expert surveyor citizen José M. Caballero, who, placing his compass, took the angle: East-northeast one-quarter east by west-southwest one-quarter west, where I caused a monument in the shape of a cross to be placed. From that point, in the said direc-

tion, one hundred cords were measured and counted, terminating at a little valley near some bald hills where I caused a monument to be set. And as it was late, I had the cord taken in and the officials and others withdraw to rest until the following day when the survey would continue; which I record and sign with my assistants and the others interested who accompanied me, to which I certify. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygnacio Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) Ygno. Elias Gonzales. (A sign manual.) Lorenzo Sortillon. (A sign manual.) For Anto. Campoy and Mauricio Neiva, Francisco Gauna. (A sign manual.) For Andres Montoya and myself, Pablo Elias. (A sign manual.) Assistant, Ramón Romero. Assistant, Francisco Gauna. (A sign manual)

On the spot where I ordered the second monument to be placed, called the valley of San Ygnacio del Bavocómari, accompanied by the party in interest, expert surveyor, officials appointed, and in order to continue the survey in the same direction, on the twenty first of the said month and year, I caused the customary fifty-vara cord to be remeasured; which done, its extremities were tied to two poles, and the cord being extended there were measured and counted in the same direction two hundred and forty-three cords, ending on the top of a hill facing south-southwest, where the survey was brought to a close owing to the broken condition of the ground and the many and deep gulleys lying in the direction of the course. By reason of this it became necessary for me and the expert surveyor to calculate the fifty-seven cords wanting to complete the side of the three *sitios para ganado mayor* (live-stock ranch), this calculation ending at the warm spring facing the Santa Rita range, at the foot of a bald hill, where I ordered a corner monument set, which faces the slope of the said range and warm spring. And from the said point, as the broken surface and deep gorges continue, in order to form the head line of these *sitios*, I and the expert surveyor, at right angles to the line mentioned, calculated in a direction northwest one-quarter north-northwest by southeast one-quarter south-southwest, seventy cords, to the base of a small poplar tree, which grows in a vale at the foot of the said Santa Rita range. And to complete the head line or square in an opposite direction—south-southwest one-quarter south-

east by north-northwest one-quarter northwest—the other forty cords were calculated, terminating at a hill where several oaks were growing, where I ordered the corresponding monuments to be placed. With these three *sitios para ganado mayor* (live-stock ranch) and the survey of the previous day four *sitios* were completed; and as it was past midday, I ordered that we withdraw to the central monument; which we did. Having reached the said monument in front of the San Ygnacio del Bavocómari marsh; the fifty-vara cord having been again examined, and its extremities having been tied to the two poles aforesaid, and the cord extended in a direction west-southeast by east-northwest, there were measured and counted seventy-four cords, which terminated on the top of some hills in the vicinity of the water point, where, night having fallen, the survey for this day was finished, all retiring to rest. Which I record, signing it with the party in interest, expert surveyor, officials named and assistants, to which I certify. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygno. Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) Lorenzo Sortillon. For Andres Montoya and for myself, Pablo Elias. (A sign manual.) For Antonio Campoy and Mauricio Neiva, Franco. Gauna. (A sign manual.) Ygno. Elias Gonzales. (A sign manual.) José de Caballero. (A sign manual.) Assistant, Ramón Romero. Assistant, Francisco Gauna. (Sign manual.)

At the place aforesaid, on the twenty-second day of the said month and year, I, the judge commissioned, the party interested, expert surveyor, and other officials appointed, having caused the fifty-vara cord to be examined, as also the course of the previous day, the cord being extended in this same direction, twenty-six cords were measured and counted, so as to complete one hundred cords for the side of one *sitio de ganado mayor*, and in the same direction, passing the cord over several hills and gulleys, three hundred cords were measured and counted, the latter crossing a valley in the vicinity of the spring-fed pools, and terminating above the said pools at a rocky hill where I ordered a corner monument to be placed, thus completing the side of the other four *sitios para ganado mayor*. The compass being placed here by the expert surveyor, and the cord being placed so as to form a right angle (or ninety degrees) with the former line; the cord having

been examined and extended in a direction south-southwest one-quarter southeast by north-northwest one-quarter northwest, forty cords were measured and counted, corresponding to those of the head line of the other four *sitios*, and terminating on top of some bald hills, where I ordered a corner monument placed, and returning to the center of this head line in an opposite direction—north-northwest one-quarter northwest by south-southwest one-quarter southeast—sixty cords were measured and counted to complete the one hundred cords, the latter ending on top of a very high hill. This finished the survey of the eight *sitios para ganado mayor* recorded by the citizen Ygnacio Elias and his sister Doña Eulalia. He acknowledged that he was satisfied with the said measurements, and advised that he would opportunely designate its bounds with monuments of mortar and stone, as is provided. And that it may so appear he signed with me and those who knew how, together with the assistants acting with me, through want of a notary, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygno. Elias. (A sign manual.) Lorenzo Sortillon. (A sign manual.) For Andres Montoya and for myself, Pablo Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) For Anto. Campoy and Mauricio Neiva, Francisco Gauna. (A sign manual.) Ygno. Elias Gonzales. (A sign manual.) José de Caballero. (A sign manual.) Assistant, Ramón Romero, Assistant, Franco. Gauna. (A sign manual.)

At the hacienda of San Pedro, on the twenty-fourth day of October of eighteen hundred and twenty-eight, I, the judge commissioned to proceed to the appraisalment and valuation of the lands surveyed in behalf of the said citizen Ygnacio Elias and his sister Doña Eulalia, the two comprising eight *sitios para ganado mayor*, have seen fit to appoint as appraisers, knowing that they possess the necessary knowledge, the citizens Pablo Elias and Ramón Romero, residents of the presidio of Santa Cruz, and who were present at the survey; who having been apprised of the said appointment, accepted the same, and each made oath in due form, promising to make the appraisalment without any fraud, deception or concealment whatsoever; and pursuant thereto they stated, in conformity and accordance with the reconnoissance they have made and informed of the orders governing the subject, that they ought to set and do set the value of

sixty pesos for each of the six *sitios de ganado mayor*, as they have a permanent water supply, and for the two remaining to complete the eight *sitios de ganado mayor*, ten pesos each, as they are absolutely bereft of water; which gives the eight *sitios de ganado mayor* a total value of three hundred and eighty pesos; and having read this declaration to the appraisers, they ratified and signed the same with me and my assistants, with whom I act through commission, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Pablo Elias. (A sign manual.) Ramón Romero. (A sign manual.) Assistant, Ramón Romero. Assistant, Franco. Gauna. (A sign manual.)

In the presidio of Santa Cruz, on the twenty-ninth of the said month and year, I, the judge commissioned, having returned to this presidio and pursuant to the foregoing proceedings and appraisal of the lands mentioned in behalf of the citizen Ygnacio Elias and his sister Doña Eulalia, comprising eight *sitios de ganado mayor y menor*, ordered that they be cried for thirty consecutive days reckoned from tomorrow, pursuant to the provisions of law. The judge commissioned so ordered and signed with the assistants, to which I certify. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

First cry. At the same place, on the thirtieth day of the month of October of the said year, I, the said judge of the said presidio, caused several persons to assemble in the public plaza of the said presidio, by sounding the drum, and in the presence of all of them the crier, Gregorio Gallegos, announced in a high and clear voice: "The lands of the place named San Ygnacio del Bavocómari, situate in this jurisdiction and comprising eight *sitios de cria de ganado mayor y menor*, in behalf of the citizen Ygnacio Elias and his sister Doña Eulalia appraised in the sum of three hundred and eighty pesos, are for sale per account of the nation. Whoever wishes to made a bid, whatever bid he makes passing before me will be accepted." And no bidder having appeared, a record was made which I signed with my assistants according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Second cry. In the same presidio, on the thirty-first day

of the said month and year, a publication by crier similar in every way to the foregoing was made, and no bidders appearing I recorded the fact, which I signed with the assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Francisco Gauna. (A sign manual.)

Third cry. In the said presidio, on the first day of November of eighteen hundred and twenty-eight another publication was made, and no bidders having appeared, a record was made which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Fourth cry. In the said presidio, on the second day said month and year, another publication was made, and no bidder appearing this record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Fifth cry. In the said presidio, on the third day of the said month and year, another publication was made, and no bidder appearing the fact was recorded, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Sixth cry. In the said presidio, on the fourth day of the said month and year, another publication was made, and no bidder appearing, I made this record, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Seventh cry. In the said presidio, on the fifth day of the said month and year, another publication was made, and no bidder appearing, a record was made which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Eighth cry. In the said presidio, on the sixth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with

my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Ninth cry. In the said presidio, on the seventh day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Tenth cry. In the presidio aforesaid, on the eighth day of the current month and year, another publication was made, and no bidder appearing, the fact was recorded, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Eleventh cry. In the presidio aforesaid, on the ninth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Twelfth cry. In the said presidio, on the tenth day of the said month and year, another publication was made, and no bidder resulting, a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Thirteenth cry. In the said presidio, on the eleventh day of the said month and year, another publication was made and no bidder resulting a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Fourteenth cry. In the said presidio, on the twelfth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assisting witnesses. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Fifteenth cry. In the presidio aforesaid, on the thirteenth

day of the said month and year, another publication was made, and there being no bidder, a record was made, which I signed with the assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Francisco Gauna. (A sign manual.)

Sixteenth cry. In the said presidio, on the fourteenth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with the assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Seventeenth cry. In the said presidio, on the fifteenth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Eighteenth cry. In the presidio aforesaid, on the sixteenth day of the said month and year, another publication was made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Nineteenth cry. In the said presidio, on the seventeenth day of the said month and year, another publication was made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twentieth cry. In the said presidio, on the eighteenth day of the said month and year, another publication was made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-first cry. In the presidio aforesaid, on the nineteenth day of the said month and year, another publication was made, and no bidder resulting, a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Twenty-second cry. In the said presidio, on the twentieth

day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-third cry. In the said presidio, on the twenty-first day of the said month and year, another publication was made, and there being no bidder, a record was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-fourth cry. In the said presidio, on the twenty-second day of the said month and year, another publication was made, and no bidder resulting, a record was made, which I signed with the assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-fifth cry. In the said presidio, on the twenty-third day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Twenty-sixth cry. In the presidio aforesaid, on the twenty-fourth day of the said month and year, another publication was made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-seventh —. In the said presidio, on the twenty-fifth day of the said month and year, another publication was made, and no bidder appearing, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-eighth cry. In the said presidio, on the twenty-sixth day of the said month and year, another publication was made, and there being no bidder, the fact was recorded, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-ninth cry. In the said presidio, on the twenty-seventh of the said month and year, another publication was

made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Thirtieth cry. In the presidio aforesaid, on the twenty-eighth day of the said month and year, the last cry was made, and no bidder resulting, the record thereof was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

In the said presidio, on the said day, month and year, this return being concluded, let it be transmitted to the Treasurer General, issuing summons to the party in interest in order that, either in person or by attorney, he may go to the capital, Alamos, to be present at the three auctions of the lands cried, which are to be held in the said capital. I, the said commissioned judge, so ordered, decreed and signed, together with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Immediately, on the said day, month and year, the citizen Ygnacio Elias being present, for himself and as attorney for his sister, Doña Eulalia, I notified him and made known to him the foregoing decree, and acknowledging service thereof, he signed with me and my assistants, with whom I act by default of a notary, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygnacio Elias. (A sign manual.) Asst., Ramón Romero. Asst., Franco Gauna. (Sign manuals.)

NOTE.—This record was transmitted together with an official letter, dated November 30, 1828, to the Treasurer General of the State, and that it may so appear, I sign. Franco. (A sign manual.)

Alamos, December 19, 1828.—Refer it to the Comptroller of the Treasury of the State for opinion. Gaxiola. (A sign manual.)

Citizen Treasurer General: This record contains the survey of eight *sitios* of land for the raising of live stock, made by the alcalde of Santa Cruz in the localities known as San Ygnacio del Bavocómari. I see no objection to adjudicating the land to the claimants, unless the extent thereof exceeds that which may be granted by article 21 of the decree of May 20, 1825; but if you are secured as required

by the provisions of article 22, I am of the opinion that they should be adjudicated in favor of the petitioners, unless a higher bidder shall appear. Alamos, December 20, 1828. Felipe Gil. (A sign manual.)

Alamos, December 22, 1828.—Agreeing with the foregoing opinion of the Comptroller, I ought to and do hereby order that the members of the Board of Auction be assembled in order to hold the last three auctions and sell the land referred to in this record. Gaxiola. (A sign manual.)

First auction. In the city of Concepción de Alamos, on the twenty-second day of the month of December of eighteen hundred and twenty-eight, the president and members composing the Board of Auction being met for the purpose of holding the first auction of the lands to which this record refers, they resolved that by sounding the drum some citizens should be assembled in the office of this Treasury, and that in their presence the party acting as crier, Marcelo Parra, should proceed to cry out, as in fact he did, in a high and clear voice, saying: "The lands in the locality called San Ygnacio del Bavocómari, situate in the jurisdiction of the presidio de Santa Cruz, comprising eight *sitios* for the raising of live stock, surveyed in behalf of Don Ygnacio and Doña Eulalia Elias, and valued at three hundred and eighty *pesos*, are to be auctioned off. Whoever desires to make a higher bid, let him appear before this Board where his bid will be accepted." And no person whatever having appeared, the fact is herein recorded. Gaxiola. (A sign manual.) Almada. (A sign manual.) Gil. (A sign manual.)

Second auction. In the said city, on the twenty-third day of the month of December of eighteen hundred and twenty-eight, there being assembled in meeting the president and members composing the Board, for the purpose of holding the second public sale of the lands referred to in this record, they ordered that it be done in the same manner as the foregoing, which was done; the party acting as crier adding only that on tomorrow the final adjudication would be made. And no bidder appearing, the fact is herein made a matter of record, and this is signed by the members of the Board. Gaxiola. (A sign manual.) Almada. (A sign manual.) Gil. (A sign manual.)

Third auction. In the said city of Concepción, on the twenty-fourth day of the said month and year, the president and members of the said Board of Auction, in meeting

assembled, resolved that the third and last auction and final adjudication of the lands mentioned in this record should be proceeded with; which was done in the same manner as at the two former auctions, the crier adding only that the adjudication was to be made at the moment. And the noon-day prayer bell having been rung for this day, without any bidder appearing, the crier announced finally in a loud voice: "One, two, three. Going, going, going. Good, good, good, may it do Don Ygnacio and Doña Eulalia Elias. In this manner were these proceedings ended; the eight *sitios* of land for the raising of live stock, in the locality known as San Ygnacio del Bavocómari, in the jurisdiction of the presidio of Santa Cruz, being publicly and solemnly sold and adjudicated to the said interested parties in the sum of three hundred and eighty *pesos*, in which amount they were appraised. And in order that it may so duly appear this record was made and signed by the president and members of the Board, together with the citizen Captain Ygnacio Elias, as attorney-in-fact of the interested parties. Gaxiola. (A sign manual.) Almada. (A sign manual.) Gil. (A sign manual.) Ygnacio Elias Gonzales. (A sign manual.)

Arispe, October 19, 1832.—The full sum of three hundred and eighty *pesos*, in which amount the eight *sitios* of land included in the locality known as San Ygnacio del Bavocómari, in behalf of the citizen Ygnacio Elias and Doña Eulalia Elias, the former a resident of the town of Rayon, and the latter a resident of this capital, having been paid into the Treasury General of the United States, as is evidenced by the certificate annexed to the record, let the title through grant issue in due form for their protection. The Treasurer General of the State of Sonora so resolved and signed with assisting witnesses, according to law. Mendoza. (A sign manual.) Asst., Mariano Romo. (A sign manual.) Asst., Luis Carranco. (A sign manual.)

On December 25, 1832, a title through grant was issued for the Bavocómari land to which this record relates. Mendoza. (A sign manual.)

Nicolas Maria Gaxiola, Treasurer General of the Revenues of the State of the West, certifies: that at folio 3, reverse, of the manual of this Treasury, for the current year, under this date, the following entry appears: Charged to land grants, three hundred and eighty *pesos* paid by Captain Don Ygnacio Elias, on account of Don Ygnacio and Doña Eulalia Elias,

residents of Arispe, for eight *sitios* of land for the raising of live stock, in the locality called San Ygnacio del Bavacómari, in the jurisdiction of the presidio of Santa Cruz, appraised in the said amount, which were adjudicated to them without opposition in the Board of Auction at a meeting held in this Treasury on December 24th last. \$380.00. Gaxiola. (A sign manual.) Ygnacio Elias Gonzales. (A sign manual.)

And in order that it may so appear I issue these presents in Alamos, on the eighth of January of eighteen hundred and twenty-nine. Nicolas Maria Gaxiola. (A sign manual.)

Crossed out: "C," not valid. Inserted: "Lorenzo Sortillon, Juan Nepomuceno Felix," valid.

It is an exact copy of its original which I authenticate and sign in Hermosillo, on February eight of eighteen hundred and ninety-eight.

N. AGUILAR.

Copia del expediente y diligencias practicadas en la medida de ocho sitios para cria de ganado mayor y caballada en los parages nombrados "San Ygnacio del Bavocómari" á favor del C^o Ygnacio Elias y Doña Eulalia Elias.

(Tesoreria General, Estado de Sonora, Feb. 8, 1898.)

Una estampilla de cincuenta centavos debidamente cancelada. C^o Tesorero General—Ygnacio Bonillas, vecino de Nogales, y accidentalmente en esta Capital, ante Ud comparezco y expongo: Que como consta por la carta que original acompaño, el Sr. Robert Perrin, dueño del terreno de nominado "San Ygnacio de Babocómari, situado en el Territorio de Arizona, Estado Unidos del Norte, necesita una cópia certificada del expediente relativo á dicho terreno que existe en los archivos de la Tesoreria de su digno cárgo, y habiendome autorizado dicho Sr. Perrin para que á su nombre solicite la cópia referida, á Ud suplico se sirva disponer se me expida el testimonio correspondiente para los usos que al interesado convengan. Protesto lo necesario. Hermosillo, Febrero 5 de 1898. Ygnacio Bonillas. Recibido en siete del corriente, y como se solicita, expidase la cópia que se pide. V. Aguilar. Rubrica. Sello 3°. 2 reales. Años de 1822 y 1823. Habilitado. Jurada por el Rey la Constitución en 9 de Marzo de 1820. Habilitado por el Estado de Occidente para los años de 1827 y '28. Un sello que dice: "Habilitado por la República Mexicana para los años de 1824 y '25. Señor Tesorero General: Don Ygnacio Elias y Doña Eulalia Elias, ante V. S., se presentan en debida forma y dicen: que necesitando terreno para bienes de campo, denuncian en consorcio de Don Rafael Elias, el Capitan Don Ygnacio Elias, y Don Nepomuceno Felix, el baldio que linda con el rancho de San Pedro, en la comprensión de Santa Cruz, hasta el punto de Tres Alamos, obligándonos á satisfacer á la nacion los derechos que le correspondan con lo demas que fuere de justicia, hasta adquirir el titulo de merced y confirmacion, para cuyo efecto se ha de servir Ud haber por registrado y denunciado dicho terreno baldio, por tanto. A Ud suplicamos se sirva mandar proveer como solicitamos en lo que recibiremos merced. Arispe, 12 de marzo de 1827. Por auuencia y ruego de Don Ygn^o Elias. Joaquin Elias.

Rubrica. Eulalia Elias. Rubrica. Cosala 1 de julio de 1827. El alcalde de policia de Santa Cruz, procederá con facultad que para ello se le confiere, sin perjuicio de tercero que mejor derecho represente y previa citación de los colindantes a las medidas avaluos y pregones por treinta dias consecutivos de las tierras que expresa el anterior denuncia, sujetándose en todo al soberano decreto del Honorable Congreso Constituyente del Estado, No. 30 de 20 de Mayo de 1825 y al reglamento que le acompaña, y evacuadas que sean dichas diligencias, las remitirá á esta Tesoreria, citando á los postores que resulten para que ocurran por sí ó por apoderados al remate que debe celebrarse en dicha oficina, previas las tres públicas almonedas de estilo. El Tesorero Gral del Estado, Nicolas M^a Gaxiola, así lo decretó y firmó. Gaxiola. Rubrica. En el presidio de Santa Cruz, y á los cinco dias del mes de Octubre de mil ocho cientos ventiocho. En vista del antecedente decreto del Sr. Tesorero Gral, cúmplase lo mandado del citado decreto fecha 1^o de julio de 1827; y al efecto, con citación de los interesados, colindantes, perito agrimensor y demas oficiales necesarios que se deberán nombrar, pásese por mí a la Hacienda de San Pedro, con el fin de que se proceda á la mensura de los sitios que los interesados desean. El C^o Alejandro Franco, alcalde constitucional del Presidio de Santa Cruz, por éste auto, así lo determinó y firmó, con testigos de asistencia con quienes actúa por receptoria por falta de escribano segun derecho. Por Alejandro Franco, Ramon Romero. Asistencia—Ramon Romero. Asistencia—Franco Gauna. En la Hacienda de San Pedro y á los diez y ocho dias del mes de octubre de mil ochocientos ventiocho, Yó el expresado juez, siendo presente el C^o Ygnacio Elias, por sí y como apoderado de su hermana D^a Eulalia, los colindantes C^o Capitan Ygnacio Elias y Nepomuceno Felix, el perito agrimensor Teniente Coronel de Yngenieros C^o José Maria Caballero á quienes notifiqué e hice saber el auto que antecede de que quedaron entendidos y dándose por citados y nombrados se señaló el dia veinte del mismo mes para marchar á proceder a la medida, lo que firmaron conmigo y los de mí asistencia en la forma ordinaria. Por Alejandro Franco—Ramon Romero. Rubrica. Ygn^o Elias. Rubrica. Juan Nepomuceno Felix. Rubrica. José de Caballero. Rubrica. Asis^a—Ramon Romero. Rubrica. Asist^a—Franco Gauna. Rubrica. Habienda llegado al puesto nombrado, San Ygnacio

de Bavocómari, el día veinte del mismo mes y año como punto en que rematan las medidas de los CC Capitan Ygn° Elias Gonzales y Nepomuceno Felix: por el rumbo Este Norueste para Ueste Suroeste, acompañado del interesado, perito agrimensor, oficiales que se han de nombrar y testigos de assistª., mande que antes de comenzar la medida se hiciera una inspección ó vista de ojo de los terrenos que se iban á mensurar á pedimento del C° Ygnacio Elias y su poderdante Dª Eulalia, y despues de bien reconocidos, hallé ser unos parages amplios para cria de ganado mayor y menor con agua la mayor parte de ellos procedente de ojos permanentes, con solo la nulidad de ser muy resgosos con abrigaderos del enemigo apache. Y para constancia lo pongo por diligencia que firmé con los de mí asistencia con quienes actúo. Por Alejandro Franco—Ramon Romero. Rúbrica. Ygn° Elias. Rubrica. Juan Nepomuceno Felix. Rubrica. Ygn° Elias Gonzales. Rubrica. Jose de Caballero. Rubrica. Asstª Ramon Romero. Rubrica. Asistª—Franco Gauna. Rubrica. En el mismo dia, mes, y año, yó el juez comisionado, a efecto de proceder á la mensura del terreno denunciado, en una loma pelona, frente de la Cieneguita de San Ygnacio de Bavocómari, nombré para contador al C° Lorenzo Sortillon, para cadeneros á los CCº Andrés Mendoza y Pablo Elias, para apuntadores á los C. C. Antonio Campoy y Mauricio Neiva, y juntos con el perito agrimensor C° Teniente Coronel José Mª Caballero, aceptaron los enunciados cárgos, prestando cada uno de por sí y en la forma correspondiente el juramento de estilo de usar fiel y legalmente de los cárgos que á cada uno corresponden, sin dolo ni fraude y obrando cada uno segun su leal saber y entender, y lo firmaron los que supieron conmigo y los de mi asistencia en la forma ordinaria de que doy fé. Por Alejandro Franco—Ramon Romero. Rubrica. Lorenzo Sortillon. Rubrica. Pablo Elias. Rubrica. Por Andres Montoya. Por Antonio Campoy, y Mauricio Neiva. Francisco Gauna. Rubrica. Asistª—Ramon Romero. Asista. Franco Guana. Rubrica. En el referido puesto y el mismo dia, mes y año, para proceder á la medida, estando presentes los interesados, oficiales nombrados y testigos de asistencia, mandé que se midiera un cordel de cincuenta varas, y atados sus extremos á dos astas, se precedió á la enunciada mensura por el perito agrimensor C Jose M. Caballero, quien colocando el agujon tomó el viento Este Norueste, cuarto al Este para Ueste

Surueste, cuarto al Ueste, donde hice poner mohonera cruz, y desde dicho puesto, por el referido punto, se midieron y contaron cien cordeles que remataron en un vallecito con inmediacion á unas lomas pelonas en donde hice poner mohonera, y por ser ya tarde hice recoger la cuerda y que los oficiales y demas se retirasen a descansar hasta el día siguiente que continuase la medida, lo que pongo por diligencia y lo firmo con los de mí asistencia y demas interesados que me acompañaban de que doy fé. Por Alejandro Franco. Ramon Romero. Rubrica. Ygnacio Elias. Rubrica. Juan Nepomuceno Felix. Rubrica. Yguo. Elias Gonzales. Rubrica. Lorenzo Sortillon. Rubrica. José de Caballero. Rubrica. Por Anto. Campoy y Mauricio Neiva. Francisco Gauna. Rubrica. Por Andres Montoya y por mí. Pablo Elias. Rubrica. Asist. Ramon Romero. Asist. Franco Gauna. Rubrica. En el parage en que mande poner la segunda mohonera, nombrado el valle de San Ygnacio de Bavocómari, y acompañado del interesado, perito agrimensor, oficiales nombrados, para continuar la medida por el mismo rumbo, y á los veinte y un días del mismo mes y año, hice reconocer de nuevo la cuerda de á cincuenta varas usuales, y reconocida que fué se amarraron sus extremos en dos astas y tendida la cuerda se midieron y contaron por el mismo rumbo doscientos cuarenta y tres cordeles que remataron en cima de una loma, que dá vista al viento sur surueste en donde se suspendio la medida por lo fragoso de la tierra muchas y profundas cañadas que se presentaban por el rumbo de ésta medida, por lo que fue de necesidad por mí y por el perito agrimensor hacer la regulación de cincuenta y siete cordeles mas, para el completo del costado de tres sitios para ganado mayor terminando esta regulacion en el ojo de la agua caliente frentero de la Sierra de Santa Rita al pie de una loma pelona en donde mandé poner Mohonera esquina que dá vista á la falda de la expresada sierra y enuniciado ojo de la agua caliente y desde dicho punto, por seguir la fragosidad del terreno y profundas cañadas para dar la cabecera de estos sitios por mí y por el perito agrimensor á ezcuada de la medida ya expresada por el viento referido, regulamos por el viento Norueste cuarto al Nornorueste, para sueste cuarto al Sursurueste—sesenta cordeles hasta el pie de un alamito que queda en un pequeño valle al pie de la enunciada Sierra de Santa Rita y para el completo de la cabecera ó

cuadra por el viento opuesto Sursurueste cuarto al Sueste para el Nornorueste cuarto al Noroeste se regularon los otros cuarenta cordeles que terminaron en una loma que tenia varios encimos en donde mandé que se pusieran las correspondientes mohoneras, con lo que con estos tres sitios para ganado mayor y el medido del dia anterior se completaron cuatro sitios; y por ser mas del medio dia, mande nos retirasen para la mahonera del centro como en efecto, habiendo llegado á la expresada mahonera del frente de la cienega de San Ygnacio del Bavocómari, hecho reconocer de nuevo la cuerda de cincuenta varas y amarrados sus extremos a las expresadas dos astas tendida la cuerda por el rumbo Ueste Sueste para Este norueste se midieron y contaron setenta y cuatro cordeles, que terminaron encima de unas lomas con inmediacion á la punta de la agua, en donde por ser ya noche se concluye la medida de este dia retirándonos todos á descansar, lo que pongo por diligencia firmandolo con el interesado, perito agrimensor, oficiales nombrados y testigos de asistencia de que doy fé. Por Alejandro Franco. Ramon Romero. Rúbrica. Ygno. Elias. Rúbrica. Juan Nepomuceno Felix. Rubrica. Lorenzo Sortillon. Por Andres Montoya y por mí Pablo Elias. Rubrica. Por Antonio Campoy y Mauricio Neiva. Franco. Gauna. Rúbrica. Ygn^o Elias Gonzales. Rubrica. José de Caballero. Rubrica. Asist^a Ramon Romero. Asist., Francisco Gauna. Rubricas. En el referido puesto y á los veintidos dias del mismo mes y año, yó el Juez comisionado, el interado, perito agrimensor y demas oficiales nombrados, hecha reconocer la cuerda de cincuenta varas y el rumbo del dia anterior por éste mismo rumbo, tendida la cuerda, se midieron y contaron veintiseis cordeles para el completo de cien cordeles para el costado de un sitio de ganado mayor, y por el mismo rumbo, pasando la cuerda por encima de varias lomas y cañadas, se midieron y contaron trescientos cordeles pasando los últimos por un valle con inmediación a los tanques del ojo de agua y terminando estos arriba de los expresados tanques en una loma pedregosa, en donde mande poner mahonera, esquina con la que se completó el costado de los otros cuatro sitios para ganado mayor en donde puesto el agujon por el perito agrimensor, puesta la cuerda escuadra y formando con el rumbo anterior un angulo recto ó de noventa grados, reconocida la cuerda y tendida por el rumbo sursurueste, cuatro al sueste para el nornorueste, cuarto al

norueste, se midieron y contaron cuarenta cordeles correspondientes á los del anterior cabeceado de los otros cuatro sitios terminando estos encima de unas lomas pelonas donde mande poner molionera esquina y volviendo al centro de la medida de esta cabecera por el rumbo opuesto, nornorueste, cuarto al norueste para el sursurueste cuarto de sueste se midieron y contaron sesenta cordeles para el completo de los cien cordeles terminando estos en la cima de un cerro muy encumbrado con lo que se concluyó la medida efectuandose el total de los ocho sitios para ganado mayor registrados por el C^o Ygnacio Elias y su hermana Doña Eulalia, y dándose por recibido quedó conforme con las expresadas medidas advertido que oportunamente señalará sus linderos con molioneras de cal y canto segun está prevenido; y para constancia lo firmó conmigo y todos los que supieron con los de mi asistencia con quienes actuó por receptoria a falta de escribano segun derecho. Por Alejandro Franco. Ramon Romero. Rubrica. Ygn^o Elias. Rubrica. Lorenzo Sordillon. Rubrica. Por Andres Montoya y por mi. Pablo Elias. Rubrica. Juan Nepouceno Felix. Por Auto. Campoy y Mauricio Neiva. Franco Gauna. Rubrica. Ygn^o Elias Gonzales. Rubrica. José de Caballero. Rubrica. Asist. Ramon Romero. Asist^a. Franco. Gauna. Rubrica. En la hacienda de San Pedro y á los veinticuatro dias del mes de Octubre de mil ochocientos veintiocho. Yó el Juez comisionado para proceder al aprecio y avalúo de los terrenos mensurados á favor del citado C^o Ygnacio Elias y su hermana Doña Eulalia, compuestos entre ambos de ocho sitios para ganado mayor, tuve á bien nombrar para tales abaluaadores por constarme tener los conocimientos necesarios á los CC. Pablo Elias y Ramon Romero, vecinos del presidio de Santa Cruz, quienes se hallaron presentes a la medida y hécholes saber dicho nombramiento lo aceptaron y juraron en la forma que a cada uno corresponde, prometiendo hacer el avalúo sin dolo, fraude ni encubierta alguna y en esta virtud dijeron de conformidad y segun el reconocimiento que tienen hecho é impuestos en las ordenes que rigen sobre la materia, el que debe dárseles y les dan el valor de sesenta pesos á cada uno de los seis sitios de ganado mayor por tener agua permanente y a los otros dos restantes para el completo de los ocho sitios de ganado mayor, el de diez pesos cada uno por carecer en lo absoluto de agua con lo que suma el total de los ocho sitios para ganado mayor

el valor de trescientos ochenta pesos, y habiendoles leído á los avaluadores ésta declaracion la ratificaron y firmaron conmigo y los de mi asistencia con quienes actúo por receptoria segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Pablo Elias. Rubrica. Ramon Romero. Rubrica. Asist., Ramon Romero. Asist., Franco. Gauna. Rubrica. En el presidio de Santa Cruz, a los Veintinueve dias del expresado mes y año, yó el Juez comisionado habiendo regresado á este Presidio y en vista de las antecedentes diligencias y avalúo de las tierras mercenadas al C. Ygnacio Elias y su hermana Doña Eulalia, compuestos de ocho sitios para cria de ganado mayor y menor, mandé se saquen al pregon por treinta dias consecutivos contados desde el dia de mañana segun se previene por la ley. Así lo proveyó y firmó el Sr Juez comisionado con los testigos de asistencia de que doy fé. Por Alejandro Franco—Ramon Romero. Rúbrica. Asist. Ramon Romero. Rubrica. Asist. Franco. Gauna. Rubrica. 1º pregon. En el mismo puesto, y á los treinta dias del mes de Octubre del referido año, yó el enunciado juez del mismo Presidio, hice que á son de caja se convocasen en la plaza pública del citado Presidio varios individuos y que en presencia de todos ellos dijese el pregonero Gregorio Gallegos en altas y claras voces. Las tierras del Parage nombrado San Ygnacio del Bavocómari sitas en esta Jurisdiccion y comprensivas para ocho sitios de cria de ganado mayor y menor á favor del C. Ygnacio Elias y su hermana Doña Eulalia, avaluadas en la cantidad de trescientos ochenta pesos se venden de cuenta de la Nacion; quien quisiera hacer postura se le admitirá la que hiciere concurriendo ante mí. Y no habiendo resultado postor alguno se puso por diligencia que firmé con los de mi asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asist—Ramon Romero. Rubrica. Asist. Franco. Gauna. Rubrica. 2º Pregon. En el mismo Presidio á los treinta y un dias del citado año y mes, se dió otro pregon igual en todo al anterior y no habiendose presentado postor lo puse por diligencia que firmo con los de asistencia, segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asist., Ramon Romero. Rubrica. Asist., Francisco Gauna. Rubrica. e Pregon. En el expresado presidio á primero de Noviembre de mil ochocientos ventiocho se dió otro pregon, y no habiéndose presentado postores se puso por diligencia que firme con los de

asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asist^a., Ramon Romero. Rubrica. Asist^a., Franco. Gauna. Rúbrica. 4 Pregon. En el citado Presidio á los dos dias del mes y año citados, se dió otro pregon, y no compareciendo postor sepuso ésta diligencia que firmé con los de mi asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asistencia—Ramon Romero. Rúbrica. Asistencia, Franco. Gauna. Rubrica. 5 Pregon. En el citado presidio a los tres dias del relacionado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asist—Ramon Romero. Rubrica. Asist^a., Franco Gauna. Rubrica. 6 Pregon. En el referido presidio á los cuatro dias del expresado mes y año se dió otro pregon y no habiendo ocurrido postor puse ésta diligencia que firmé con los de asistencia. Por Alejandro Franco—Ramon Romero. Rubrica. A. Ramon Romero. Rubrica. A. Franco. Gauna. Rubrica. 7 Pregon. En el mismo Presidio a los cinco dias del mencionado mes y año, se dió otro pregon y no habiendo postor se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco—Ramon Romero. Rúbrica. A. Ramon Romero. Rubrica. A. Franco. Gauna. Rúbrica. 8 Pregon. En el citado Presidio á los seis dias del citado mes y año se dió otro pregon y no habiendo comparecido postor, se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. A. Ramon Romero. Rubrica. A. Franco—Gauna. Rubrica. 9 Pregon. En el mencionado Presidio á los siete dias del mismo mes y año se dió otro pregon y no habiendo ocurrido postor se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco—Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rúbrica. 10 Pregon. En el relacionado Presidio á los ocho dias del mes y año corriente se dió otro pregon y no habiendo resultado postor se puso por diligencia que firmé con los de mi asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rúbrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rubrica. 11 Pregon. En el expresado Presidio á los nueve dias del mismo mes y año, se dió otro pregon y no habiendo comparecido postor se puso por diligencia que firmé con los de

mi asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rubrica. 12 Pregon. En el citado presidio á los diez dias del citado mes y año, se dio otro pregon y no habiendo resultado postores se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rubrica. 13 Pregon. En el mismo Presidio á los once dias del citado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firme con los de asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rubrica. 14 Pregon. En el citado Presidio á los doce dias del mismo mes y año se dió otro pregon y no habiendo comparecido postor, se pudo por diligencia que firmé con los testigos de asistencia. Por Alejandro Franco—Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rubrica. 15 Pregon. En el expresado presidio los trece dias del citado mes y año se dió otro pregon y no habiendo postor, se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco—Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rubrica. 16 Pregon. En el citado Presidio á los catorce dias del citado mes y año se dió otro pregon y no habiendo resultado postor, se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. 17 Pregon. En el mismo Presidio á los quince dias del mismo mes y año, se dió otro pregon, y no habiendo ocurrido postor, se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. 18 Pregon. En el relacionado Presidio á los diez y seis dias del citado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubrica. 19 Pregon. En el citado Presidio á los diez y siete dias del citado mes y año se dió otro pregon, y no resultando postor se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero.

A., Francisco Gauna. Rubricas. 2L Pregon. En el mismo Presidio á los diez y ocho dias del expresado mes y año se dió otro pregon y no habiendo resultado postor, se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. Francisco Gauna. Rubricas. 21 Pregon. En el relacionado Presidio á los diez y nueve dias del mismo mes y año se dió otro pregon, y no habiendo resultado postor, se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. 22 Pregon. En el expresado Presidio á los veinte dias del expresado mes y año se dió otro pregon y no habiendo postor se puso por diligencia que firme con los de asistencia segun derecho. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. A., Ramon Romero. A. Francisco Gauna. Rubricas. 23 Pregon. En el mencionado Presidio á los veinte y un dias del citado mes y año, se dió otro pregon y no habiendo postor se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco. Ramon Romero. Rúbrica. A. Ramon Romero. A., Francisco Gauna. Rubrica. 24 Pregon. En el mismo presidio á los veintidos dias del citado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firme con los de asistencia segun derecho. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Francisco Gauna. Rubricas. 25 Pregon. En el expresado Presidio á los veintitres dias del mismo mes y año se dió otro pregon y no apareciendo postor se puso por diligencia que firmé con los de mí asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. 26 Pregon. En el relacionado Presidio á los veinticuatro dias del citado mes y año se dió otro pregon, y no resultando postor, se puso por diligencia que firmét con los de mí asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Francisco Gauna. Rubricas. 27 Pregon. En el citado Presidio á los veinticinco dias del citado mes y año se dió otro pregon y no habiendo ocurrido postor se puso por diligencia que firmé con los de mí asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A. Ramon Romero. A., Francisco Gauna. Rubricas. 28 Pregon. En el mismo Presidio á los veintiseis

días del citado mes y año se dió otro pregon y no habiendo postor se puso por diligencia que firme con los de mi asistencia segun derecho. Por Alejandro Franco. Ramon Romero. A., Ramon Romero. A., Francisco Gauna. Rubricas. 29 Pregon. En el expresado Presidio á los veintisiete dias del mismo mes y año se dió otro pregon y no resultando postor, se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. 30 Pregon. En el mencionado Presidio á los veintiocho dias del expresado mes y año se dió el último pregon y no habiendo resultado postor, se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. En el mismo Presidio, en dicho dia, mes y año, estando concluido éste expediente, remitase al Sr. Tesorero General, con citación del interesado á fin de que trasladándose por sí ó por apoderado á la Capital de Alamos asista á las tres almonedas de los terrenos pregonados que han de verificarse en la expresada Capital. Yó el juez comisionado así lo decreté mandé y firmé con los de mi asistencia segun derecho. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. Yncontinente en dicho dia, mes y año siendo presente el C. Ygnacio Elias por sí y como apoderado de su hermana D. Eulalia le notifiqué é hice saber el decreto que antecede y dándose por citado lo firmo conmigo y los de mi asistencia con quienes actuo por receptoria segun derecho. Por Alejandro Franco. Ramon Romero. Rubrica. Ygnacio Elias. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. *Razon.* Se remitió éste expediente con oficio fecha 30 de noviembre de 1828 al Sr. Tesorero Gral del Estado y para constancia lo rubriqué. Franco. Rubrica. Alamos, 19 de Diciebre de 1828. Pase al Promotor Fiscal de la Hacienda del Estado para que exponga su dictamen. Gaxiola. Una rubirca. C^o Tesorero General. Este expediente contiene la mensura de ocho sitios de tierra para la cria de ganado mayor y caballada practicada por el alcalda de Sta. Cruz en los parages de San Ygnacio del Bavocómari. Nada encuentro en contrario para que dejen de adjudicarse a los pretendientes si no es que exceden del numero á que pueden concederse por el artº 21 del decreto de 20 de Mayo de 1825,

empero sí Ud está asegurado de los requisitos que expresa el 22, soy de opinion que se rematen en favor de los registrantes á menos que no aparesca otro mejor postor. Alamos, Dicbre 20 de 1828. Felipe Gil. Rubrica. Alamos 22 de Dicbre de 1828. Conformándome con el dictámen del Promotor fiscal que antecede, debia de mandar y mando se citen á los Sres vocales de la Junta de almonedas para practicar las tres ultimas y remate del terreno que expresa este expediente. Gaxiola. Rubrica. 1ª almoneda. En la ciudad Concepción de Alamos á los veintidos dias del mes de Diciembre de mil ochocientos veintiocho, reunidos en Junta de almoneda el Sr. Presidente y vocales que la componen con el objeto de celebrar la primera de los terrenos á que se contrae éste expediente dispusieron que a son de tambor se convocasen algunos ciudadanos en el oficio de ésta Tesoreria y que en su presencia procediese el que funcionó de pregobero Marcelo Parra, a dar un pregon como efectivamente lo dió en altas y claras voces, diciendo: "Van á rematarse las tierras del parage nombrado San Ygnacio de Bavocómari sitas en jurisdicción del Presidio de Santa Cruz comprensiva de ocho sitios para cria de ganado mayor y caballada y ganado menor, mensuradas á favor de Don Ygnacio y Doña Eulalia Elias y avaluados en tres cientos ochenta pesos; quien quisiera hacer mejor postura, ocurra ante esta Junta donde se le admitirálo que haga. Y no habiendo ocurrido persona alguna se pone por diligencia para constancia. Faxiola. Rubrica. Almada. Rubrica. Gil. Rubrica. 2ª almoneda. En la expresada ciudad á los veintitres dias del mes de Dicbre de mil ochocientos veintiocho, convocados en Junta los Sres. Presidente y vocales que la componen con el fin de celebrar la segunda almoneda de los terrenos que expresa éste expediente mandaron se practicase en los mismos terminos que la primera antecedente, lo que se verifico añadiendo unicamente el que hizo veces de pregonero que el dia de mañana habia de quedar celebrado el remate. Y no habiendo resultado postor se pone por diligencia para constancia que firmaron los Sres. de la Junta. Gaxiola. Rubrica. Almada. Rubrica. Gil. Rubrica. 3ª almoneda. En la nominada ciudad de la Concepción a los veinticuatro dias del mismo mes y año hallandose reunidos el Sr. Presidente y vocales de la expresada Junta de almonedas, dispusieron se evacuase la tercera y remate de los terrenos que menciona este expediente lo cual se

hizo en la misma conformidad que las dos anteriores, con solo añadir el pregonero que en éste momento ha de quedar celebrado el remate. Y habiendo dado la plegaria de las doce de éste día sin que ocurriese postor alguno, dijo por último el pregonero en alta voz "a la una, á los dos, á las tres: que se remata que se remata que se remata: que buena que buena que buena les haga a Don Ygnacio y Doña Eulalia Elias. En tales terminos se concluyó este acto quedando pública y solemnemente rematado á favor de dichos interesados los ocho sitios de tierra para cria de ganado mayor y caballada en el parage nombrado San Ygnacio del Bavocómari, jurisdiccion del Presidio de Santa Cruz, en la cantidad de Trescientos ochenta pesos en que fueron avaluados. Y para la debida constancia se pone esta diligencia que firmaron los Sres. Presidente y vocales de la Junta con el C. Capitan Ygnacio Elias como apoderado de los interesados. Gaxiola. Rubrica. Alnada. Rubrica. Gil. Rubrica. Ygnacio Elias Gonzales. Rubrica. Arispe, 19 de Octubre de 1832. Habiendose verificado el entero de trescientos ochenta pesos en la Tesoreria General del Estado Unido, en que se remataron los ocho sitios de tierras comprendido en el questo nombrado San Ygnacio del Bavocómari á favor del C^o Ygnacio Elias y Doña Eulalia Elias vecino el primero de la Villa de Rayon y la segunda de esta Capital, como lo comprueba la certificación que está agregada al expediente, expidase el titulo de merced en forma para su resguardo. El Tesorero Gra del Estado de Sonora así lo proveyo y firmó con testigos de asistencia segun derecho. Mendoza. Rubrica. A., Mariano Romo. Rubrica. A., Luis Caranco. Rubrica. En 25 de Diciembre de 1832 se expidió titulo de merced del terreno del Bavocómari de que trata este expediente. Mendoza. Rubrica. Nicolas Maria Gaxiola, Tesorero Gral. de las Rentas del Estado de Occidente, Certificó que al folco 3 vuelta del manual de ésta Tesoreria, del corriente año, se halla sentada con ésta fecha la partida siguiente Cárگو en mercedes de tierra trescientos ochenta pesos que enteró el Capitan Don Ygnacio Elias á nombre de Don Ygnacio y Doña Eulalia Elias vecinos de Arispe, por la merced de ocho sitios de tierra para cria de ganado mayor y caballada en el parage nombrado San Ygnacio del Bavocómari, jurisdiccion del Presidio de Santa Cruz, avaluados en la indicada cantidad, que se remataron á su favor sin opositor alguno en Junta de almonedas celebrada en ésta Tesoreria el día 24 de

Diciembre próximo pasado \$380. Gaxiola. Rubrica. Ygnacio Elias Gonzales. Rúbrica. Y para que conste doy la presente en Alamos á ocho de Enero de mil ochocientos veintinueve años. Nicolas Maria Gaxiola. Rubrica. Testado. C. No vale. E. L. expresado. Lorenzo Sortillon. Juan Nepomuceno, Felix. Vale.

Es copia exacta de su original que autorizo y firmo en Hermosillo á ocho do Febrero de mil ochocientos noventa y ocho.

N. AGUILAR.